

From: Merrill, Adam
Sent: 2017-11-03T09:37:24-04:00
Importance: Normal
Subject: Fwd: Public Lands News: Hill addressing wildfires; Trump hints on monuments; Zinke attacks energy rules
Received: 2017-11-03T09:38:17-04:00
[P2117Nov3.pdf](#)
[P2117Nov3.doc](#)

Public Lands News follows...

----- Forwarded message -----

From: **Public Lands News** <james@publiclandnewsletter.com>

Date: Fri, Nov 3, 2017 at 7:04 AM

Subject: Public Lands News: Hill addressing wildfires; Trump hints on monuments; Zinke attacks energy rules

To: james@publiclandnewsletter.com

Dear Public Lands News Subscriber:

November 3, 2017: Attached is the current issue of the newsletter Public Lands News (Volume 42 Number 21), in .doc format and in PDF format. Below are the headlines. We thank you for reading Public Lands News.

The Editors

In the attached issue. . .

* CONGRESS MOVING ON FIRE ASSISTANCE. House approves bill to expedite hazardous fuels projects. Congress also completes pay back for FY 2017 emergency suppression expenses. Lots of other measures in works.

Page 1

* TRUMP SAYS HE WILL SHRINK UTAH MONUMENTS. Gov. Herbert expects Trump will reduce Bears Ears from 1.35 million acres to 110,000 acres.

Page 4

* ZINKE LAYS OUT ENERGY RULE AMBITIONS. Lists steps Dol is taking on hydraulic fracturing, methane emissions, oil and gas orders, etc.

Page 6

* SENATE MOVING QUICKLY ON ANWR AUTHORIZATION. Murkowski committee holds hearing just days after Congressional budget opens way for big vote.

Page 8

* SOME STATES WANT SAGE-GROUSE AUTHORITY. Idaho is all for it. But Montana asks House panel to give 98 Obama land use plans a chance.

Page 12

* LEAKED DOI STRATEGIC PLAN SHORT ON DETAIL. Other than a firm deadline for BLM to catch up on oil and gas APD backlog. Final in December?

Page 13

* SENATORS BARELY REJECT ESA AMENDMENT. Provision would have required legislation to exempt intrastate species. Three GOP votes against.

Page 15

* COCHRAN'S HEALTH HOLDS UP MONEY BILLS. Chairman appeared for budget vote but was unsteady. His illness has forced spending bills delay.

Page 16

* IBLA DECISIONS.

Page 18

* NOTES.

Page 18

* BOXSCORE OF LEGISLATION.

Page 20

Public Lands News is published by Resources Publishing Co., P.O. BOX 41320, Arlington, VA 22204. EIN 52-1363538. Phone (703) 553-0552. FAX (703) 553-0558. E-mail james.b.coffin@verizon.net. Website: <http://www.plnfpr.com>.

Public Lands News®

Editor: James B. Coffin

Subscription Services: Gerrie Castaldo

Volume 42 Number 21, November 3, 2017

In this issue. . . .

Congress moving on fire assistance. House approves bill to expedite hazardous fuels projects. Congress also completes pay back for FY 2017 emergency suppression expenses. Lots of other measures in works..... Page 1

Trump says he will shrink Utah monuments. Gov. Herbert expects Trump will reduce Bears Ears from 1.35 million acres to 110,000 acres..... Page 4

Zinke lays out energy rule ambitions. Lists steps DoI is taking on hydraulic fracturing, methane emissions, oil and gas orders, etc..... Page 6

Senate moving quickly on ANWR authorization. Murkowski committee holds hearing just days after Congressional budget opens way for big vote.. Page 8

Some states want sage-grouse authority. Idaho is all for it. But Montana asks House panel to give 98 Obama land use plans a chance.... Page 12

Leaked DoI strategic plan short on detail. Other than a firm deadline for BLM to catch up on oil and gas APD backlog. Final in December?.. Page 13

Senators barely reject ESA amendment. Provision would have required legislation to exempt intrastate species. Three GOP votes against... Page 15

Cochran's health holds up money bills. Chairman appeared for budget vote but was unsteady. His illness has forced spending bills delay..... Page 16

IBLA decisions..... Page 18

Notes..... Page 18

Boxscore of legislation..... Page 20

Senate, House are addressing fire prevention, funding

Congress is moving swiftly if not always in one direction to address both prevention of wildfires and the payment for suppression of fires.

In step one the House November 1 approved a lead bill (HR 2936) that would speed environmental reviews prior to hazardous fuels reduction projects, i.e. timber sales.

In addition the bill would authorize the President to establish a special fund to supplement regular appropriations to fight wildfires.

That latter provision, though, falls short of a proposal in bipartisan legislation (HR 2862, S 1571) to transfer wildfire suppression costs above the 10-year average out of agency appropriations bills and into disaster spending. Rep Mike Simpson (R-Idaho) and Sen. Mike Crapo (R-Idaho) are the lead sponsors of those bills.

Rep. Bruce Westerman (R-Ark.), sponsor of the House-passed hazardous fuels bill, praised his measure. "We need not look any further than the communities across Montana, California, and other western states ravaged by wildfires this year to see how years of unmanaged federal forests have wreaked havoc on our environment polluting our air and water and destroying thousands of acres of wildlife habitat," he said. "The Resilient Federal Forests Act would provide the Forest Service with new authorities to provide protection to America's forests by reducing the risks of wildfires through proper management techniques."

A few western Democrats voted for the Westerman bill, giving it political cover in the House, including Reps. Kurt Schrader (D-Ore.) and Jim Costa (D-Calif.). However, the Senate may be a closer contest, with a number of Republican senators regularly siding with environmentalists on natural resource issues.

Although a few House Democrats supported HR 2936 the majority of Democrats objected to limits on environmental reviews, endangered species reviews and litigation. The final vote on the bill was 232-to-188.

Said Ranking House Natural Resources Committee Member Raúl M. Grijalva (D-Ariz.), "The bill includes sweeping waivers of provisions in (the National Environmental Policy Act), the (Endangered Species Act) and the Equal Access to Justice Act that Senate leaders of both parties already rejected in the previous Congress. House Republicans know the bill has no future in the Senate, and are pushing it anyway as a purely ideological exercise."

As for emergency wildfire spending, in a committee report the Democrats said the special appropriations bill fund is inadequate. "While we appreciate the acknowledgment that we have to do something to address the funding mechanism for wildfire, the fix in this bill needs work," they said. "It fails to freeze the ten-year average, like the bipartisan Wildfire Disaster Funding Act sponsored by Representative Simpson of Idaho. Without this adjustment, spending on wildfire will never get under control."

Meanwhile, the Senate gave final approval October 24 to a disaster-spending bill (HR 2266) that includes a \$576.5 million payback to the Forest Service and Interior Department for emergency wildfire expenses in fiscal year 2017. President Trump signed it into law October 26 as PL 115-72.

But that law does not address the continuing problem of wildfire suppression costs that far exceed appropriations, forcing agencies to borrow money from line programs, including fire prevention.

However, at least one more disaster-spending bill is in the pipeline that could provide an opportunity to address wildfire borrowing by transferring larger-than-normal wildfire expenses to disaster spending, and out of appropriations bills.

Ten western senators – eight Democrats and two Republicans – last week asked Senate leaders to include a fire borrowing fix in HR 2266, to no avail, but their request may be given more deference in coming hurricane disaster bills.

Led by Sens. Ron Wyden (D-Ore.) and Crapo, their letter said, "While it is absolutely necessary that the agencies responsible for fighting wildfires receive the funds they need for fiscal year 2017, this is only the first step to solving this long-term problem. In addition to emergency funding, the Forest Service and DOI require stable, reliable funding to help prevent wildfires before they begin."

For now Congress is content to refund federal agencies for fire borrowing in fiscal 2017. The emergency bill, as requested by the Trump administration, puts up \$526.5 million for the Forest Service and \$50 million for the Interior Department. The law specifies that all the money is to be applied to fiscal 2017 **DOI-2019-10 00474**

On the wildfire prevention front in the Senate, different groups of senators are working on competing legislation. On October 19 Republican and Democratic senators teamed up to introduce legislation (S 1991) that would establish an aggressive new program to prevent major wildfires.

The bill would (1) allocate \$100 million per year to at-risk communities to prepare for wildfires and (2) establish a pilot program in the Forest Service and the Interior Department to carry out fire-prevention activities on high-risk lands. Sens. Maria Cantwell (D-Wash.) and Crapo were among the lead sponsors.

Then on October 25 the Senate Environment and Public Works (EPW) Committee held a hearing on separate draft legislation put together by four Republican senators that would limit environmental reviews of hazardous fuels projects.

The bill from Sens. John Barrasso (R-Wyo.), Orrin Hatch (R-Utah), John Thune (R-S.D.), and Steve Daines (R-Mont.) would establish several new categories of categorical exclusions from environmental reviews, including an exclusion of "immediate action in critical response situations due to disease and insect infestations, threats to watersheds, and other high-risk areas."

Said Barrasso, chairman of the EPW committee, "State and local forest managers need the flexibility to remove trees and dead wood that fuel these terrible fires. Our bill will provide commonsense tools and cut unnecessary red tape. We must act quickly to address the risk these fires pose to both people and wildlife."

The two new Senate bills address wildfire prevention but not wildfire borrowing.

The already urgent national wildfire crisis was worsened earlier this month with catastrophic fires in northern California.

Although Congress is now repaying federal agencies for their fiscal 2017 wildfire costs, the damage has already been done because the agencies were forced to take money out of hazardous fuels reductions, thus leaving dry, overgrown forests ready to explode.

There is not much appropriations help in the pipeline for hazardous fuel reductions. The House approved a fiscal year 2018 appropriations bill (HR 3354) September 14 that would put up only \$5 million more than the fiscal 2017 appropriation for hazardous fuels. The House approved \$575 million for prevention efforts in fiscal 2018, compared to the \$570 million fiscal 2017 level.

The Senate Appropriations Committee had planned to take up HR 3354 in mid-October but canceled scheduled meetings because of the illness of committee chairman Thad Cochran (R-Miss.)

On the emergency wildfire borrowing front, the lead Senate bill (S 1571) from Crapo now before the Senate Banking Committee would help out by transferring out of appropriations bills all emergency wildfire costs greater than the 10-year average. But S 1571, designed primarily to extend a National Flood Insurance Program, does not address hazardous fuels elimination.

Rep. Betty McCollum (D-Minn.) said the House October 12 missed the boat by not including a fire fix in the disaster assistance bill, HR 2266. "As the duration and severity of wildfires grows, costs will continue to rise," she said. "Unfortunately, once again we have missed the opportunity to fix the way the Federal Government funds wildfire suppression. Let me be clear: the next supplemental must include a legislative fix for wildfire spending, and it must adequately support the Department of the Interior and its vital efforts to help our country rebuild from the recent fires and hurricanes."

At press time various estimates put the fire damage in California at 41 people dead, 8,400 buildings destroyed, 100,000 people evacuated from their homes, \$65 billion in property losses and the sickening of citizens 100 miles from the fires.

As of the end of fiscal 2017 the Forest Service said it had spent \$2.4 billion on fire fighting but had an appropriation of just \$1.8 billion. The emergency appropriations bill should pay back the agency for most of its costs.

For fiscal 2018 the House September 14 approved a fiscal year 2018 wildfire appropriations bill (HR 3354) that would roughly maintain the status quo. For the Forest Service the House recommended \$2.898 billion, compared to a fiscal 2017 appropriation of \$2.833 billion. For an emergency account called FLAME the committee recommended no money, compared to \$342 million in fiscal 2017.

For the Interior Department the House recommendation is \$956 million, compared to a fiscal 2017 appropriation of \$943 million. For an emergency account called FLAME the committee proposed no money, compared to a fiscal 2017 FLAME appropriation of \$65 million.

Trump tells Utah officials he will shrink Bears Ears

President Trump is strongly suggesting that in early December he will reduce the size of the Bears Ears National Monument from 1.35 million acres to 120,000 acres.

Utah Gov. Gary Herbert (R-Utah) said October 27 that the President told him in a phone call that day he will accede to the state's recommendation for the area, and the state has recommended reduction of the monument to 120,000 acres.

"While we do not yet know the specifics of their final plan, I understand from our conversation that any final decision will honor our recommendations," Herbert said in a statement.

In addition to reducing the size of the BLM-managed monument designated by President Obama on Dec. 28, 2016, Herbert said he had recommended "first, that any new boundaries protect the extraordinary antiquities within these areas. Second, that local Native Americans be given meaningful co-management of the lands in the Bears Ears region. And finally, that Congress be urged to pass appropriate protections for federal lands throughout Southern Utah."

Environmentalists' immediate response to word that Trump would reduce the size of Bears Ears was to threaten a lawsuit. "If President Trump attacks the Bears Ears National Monument it will long be viewed as one of the worst acts of injustice committed by a modern president," said Scott Groene, executive director of the Southern Utah Wilderness Alliance. "And one that inevitably will be rectified by a federal court."

Attorneys for native groups that support a Bears Ears monument also threatened to file lawsuits and told the press litigation is "ready to go."

The Native American Rights Fund, representing Zuni, Hopi and Ute Mountain Utes, is taking the lead. Those tribes petitioned Obama for the protective designation.

The three county commissioners in San Juan County, the home of Bears Ears, have all opposed the designation of the Bears Ears area as a national monument, according to Utah newspapers. The three are chairman Bruce Adams, Rebecca Benally and Phil Lyman.

President Trump also told Sen. Orrin Hatch (R-Utah) that he would authorize coal development in the 1.9 million-acre Grand Staircase Escalante National Monument. In addition Trump might reduce the size of Grand Staircase monument.

On August 24 Secretary of Interior Ryan Zinke submitted a recommendation to President Trump that he take unspecified steps to reduce the size of four national monuments in the West and increase consumptive uses in 10 monuments.

On Zinke's chopping block for reductions are Bears Ears, Grand Staircase-Escalante, Cascade-Siskiyou National Monument in Oregon, and Gold Butte National Monument in Nevada. In his recommendation Zinke did not specify how many acres should be removed from each monument.

The Zinke memo argues that past Presidents have violated the Antiquities Act of 1906 by setting aside excessively large amounts of land for monuments.

"No President should use the authority under the Act to restrict public access, prevent hunting and fishing, burden private land, or eliminate traditional land uses, unless such action is needed to protect the object," Zinke said in a document titled *Final Report Summarizing Findings of the Review of Designations Under the Antiquities Act*.

For the six major national monuments in the West up for major change in land uses Zinke recommended that the Presidential Proclamation for each and the management plan for each be reshaped to authorize "traditional uses."

If President Trump does issue proclamations directing revisions to management plans, those revisions could take years to write. Historically, BLM has required around five years to write monument management plans, which are then subject to appeal or lawsuit.

Legislation: Congress entered the overall battle over national monument powers October 11 when the House Natural Resources Committee approved a bill (HR 3990) to set new conditions on designations. The vote was 23-to-17.

Above all, the bill from panel chairman Rob Bishop (R-Utah) would forbid the designation of any national monument larger than 85,000 acres, except in an emergency and that emergency designation could last for only one year.

In addition HR 3990 would give Congressional authority to any administration to reduce existing national monuments larger than 85,000 acres.

The latter provision would give legal coverage to President Trump to reduce the size of the four national monuments in the West, as recommended by Zinke.

The legal debate: Contrasting reports have been posted in the last year on the legality of a President's authority to unilaterally revoke or revise a national monument designation, or to reduce the size of a monument.

. A Congressional Research Service (CRS) report of last fall cast doubt that Trump enjoys such authority. But an American Enterprise Institute report published this spring argues that he does.

A new report from public lands consultant Pamela Baldwin backs the CRS report when it argues that the Federal Land Policy Management Act of 1976 (FLPMA) effectively ended the debate when it said the *secretary of Interior* could not "modify or revoke any withdrawal creating national monuments" under the Antiquities Act of 1906.

While that prohibition applies directly to the secretary of Interior, Baldwin says by inference it also applies to a President. She says that, "if there is any ambiguity, the entire statute, and the policies and intent of Congress must be considered; and that all provisions of a statute must be given effect. Applying these tenets to the provisions of FLPMA leads to the conclusion that a president lacks the authority to revoke or modify national monuments under the Antiquities Act."

A copy of Zinke's recommendation memorandum is here:

<https://www.documentcloud.org/documents/4052225-Interior-Secretary-Ryan-Zinke-s-Report-to-the.html>.

BLM summarizes - and defends - energy rule revisions

In a formal report the Interior Department November 1 listed the steps it is taking - and intends to take - to overturn Obama administration public lands energy policies.

In some instances those steps may be restrained by federal courts, as has already happened. Several courts have blocked attempts to delay and/or reverse specific regulations because agencies didn't take all the steps mandated by the Administrative Procedures Act.

But for now Secretary of Interior Ryan Zinke is responding to President Trump's charge to report on steps the department is taking to make America dominant in world energy production.

"Interior is committed to an America-First energy strategy that fosters domestic energy production in order to keep energy prices low for American families, businesses, and manufacturers," says the report published in the *Federal Register* November 1.

The report is a first cousin to a comprehensive Interior Department strategic plan that was leaked to the press last week in draft form. That draft plan sets out as a major department goal the acceleration of processing applications for permit to drill oil and gas, but it doesn't get into the weeds of most specific regulation reversals. (See related article page 13.)

Readers of *PLN* are familiar with the various steps Zinke and the Trump administration have taken and plan to take to block and/or revise public lands energy policies. Among the targets are policies governing hydraulic fracturing, methane emissions, coal leasing, fossil fuel energy royalties, onshore oil and gas orders from BLM, the National Petroleum Reserve Alaska, the greater sage-grouse, and BLM resource management planning.

First on the list in the report is a **hydraulic fracturing** rule of March 26, 2015. On July 25 BLM proposed to rescind it. BLM said it did not intend to write a new regulation because other federal regulations and state standards adequately govern the practice.

BLM implied that it had authority to simply cancel the rule because a U.S. District Court in Wyoming set aside the 2015 rule on June 21, 2016. So if the rule never went into effect, BLM suggested, the bureau could simply cancel the rule.

That might avoid the strictures of the Administrative Procedures Act that federal courts say agencies must follow in blocking or reversing regulations. Using such procedures, agencies may need years to change existing regulations.

integrity and cement barriers, (2) disclose chemicals used in fracking shortly after completing operations, (3) follow stiffer standards on storage of waste fluids and (4) submit more detailed information on the geology and location of existing wells.

As noted, a federal court had already placed the Obama hydraulic fracturing rule in abeyance. On June 21, 2016, U.S. District Court Judge Scott W. Skavdahl in Wyoming blocked implementation of the regulation, saying BLM had no authority to issue the rule, period. He said Congress had forbidden both BLM and EPA from regulating non-diesel hydraulic fracturing.

Second on the report's list for BLM is a **methane emissions** rule that the bureau October 5 *proposed* to suspend until January 17, 2019. The suspension would give BLM time to write a Trump administration rule to either revoke the Obama rule or revise it.

A federal court on October 4 blocked an initial Trump administration attempt to delay implementation of portions of the rule. In U.S. District Court for Northern California Judge Elizabeth Laporte held that the bureau failed to follow normal rule-making procedures, as required by the Administrative Procedures Act.

The Obama rule requires producers to use available technology to cut flaring in half and to inspect their operations regularly for leaks.

The BLM rule is a companion to an EPA methane emissions rule that the Trump administration is also trying to avoid implementing. However, on July 30 the U.S. Circuit Court of Appeals for the District of Columbia said in a 9-to-2 vote that EPA under the Administrative Procedures Act (APA) must follow formal rule-making procedures before delaying implementation the rule.

EPA first delayed implementation of a methane emissions rule for 90 days beyond a compliance deadline. Subsequently, on June 13 EPA proposed a two-year delay of the methane rule of June 3, 2016.

EPA had argued that it had broad discretion to revisit its own rules under the Clean Air Act. But the D.C. Circuit Court of Appeals ruled that the APA required a reproposal and comment period before suspending/terminating the rule.

The Interior Department review also addressed these other policy areas:

ENERGY ROYALTIES: In a July 1, 2016, rule the Obama administration replaced an old oil, gas and coal royalty standard that applied a series of benchmarks to set the royalty price. In the Obama rule ONRR would begin with a first affiliated sales price, followed by index prices.

The Office of Natural Resources Revenue (ONRR) on August 7 repealed the Obama rule, effective September 6, reinstating the old rule.

Before it repealed the Obama rule on August 7 ONRR had attempted to postpone the Obama rule, only to be blocked by judge Laporte, who again invoked the Administrative Procedures Act requirement to take public comment. Subsequently, ONRR did take public comment, enabling it to repeal the rule on September 6 within the court's guidelines.

COAL LEASING PROGRAM: On March 29, 2017, Secretary Zinke lifted a federal coal-leasing moratorium imposed by his predecessor Sally Jewell on January 15, 2015.

The Zinke report says that BLM is now "working to process coal lease applications and modifications 'expeditiously' in accordance with regulations and guidance that existed before Secretarial Order 3338."

ONSHORE OIL AND GAS LEASING ORDERS: On Nov. 17, 2016, the Obama administration completed new regulations governing site security, oil measurements, and gas measurements.

Says the Zinke review, "The BLM expects to complete its assessment of possible changes to alleviate burdens that may have added to constraints on energy production, economic growth and job creation by the end of the fourth quarter of FY 2017."

NATIONAL PETROLEUM RESERVE ALASKA (NPRA): Although the Obama administration held partial oil and gas lease sales in the reserve on a semi-regular basis, Zinke has made it clear he will make more frequent and more comprehensive sales.

To that end the Interior Department announced October 25 that it will offer for oil and gas lease sale December 6 10.3 million acres of the reserve. That's virtually all land in NPRA cleared for possible sale under a land management plan.

SAGE-GROUSE: In lieu of listing the greater sage-grouse (GRSG) as an imperiled species under the Endangered Species Act the Obama administration in September 2015 had BLM and the Forest Service publish 98 land management plans governing protection of the bird.

Said the review document, "These GRSG plans and policies will affect where, when, and how energy and minerals are developed within the range of the GRSG."

The Interior Department October 11 formally announced that it intends to revise the 98 Obama plans, presumably to loosen up land uses on affected lands. In a *Federal Register* notice BLM said it intends to amend "all or some" of the plans. The bureau will begin by taking public recommendations on possible revisions for 45 days. Completing revised plans would take years. (See related article page *WHAT*.)

BLM PLANNING: Congress gave the Trump administration a boost March 7 by revoking under the Congressional Review Act an Obama administration BLM planning rule of Dec. 12, 2016, the so-called 2.0 rule.

The 2.0 planning rule revised the substance of a previous planning rule by among other things placing a greater emphasis on broad area planning, requiring an assessment prior to the writing of a management plan and involving the public earlier in the planning process.

The Interior review is here: [https://www.doi.gov/sites/doi.gov/files/uploads/interior energy actions report final.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/interior%20energy%20actions%20report%20final.pdf).

Murkowski moving fast on ANWR, after budget gives go-ahead

Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) is losing no time in producing legislation to open the coastal plain of the Arctic National Wildlife Refuge (ANWR) to oil and gas leasing.

No sooner had the House October 26 given final Congressional approval to a fiscal year 2018 Congressional budget (H Con Res 71) that directs her committee to effectively come up with a leasing plan than she had scheduled a hearing.

Thus, on November 2 the committee considered her legislation (HR 49) that would authorize leasing in the 1.5 million-acre coastal plain to meet the demands of the budget directive. A committee mark-up is tentatively scheduled for November 8.

Said Murkowski, "What Alaskans are asking for is to develop 2,000 federal acres within 1/10,000 of ANWR. We also understand that if we open the 1002 area the

economic benefits will be substantial, our national security will be strengthened and the environmental impacts will be minimal."

She addressed the question, would bids for leases be sufficient to produce \$1 billion, as the budget demands. "The answer to that is a simple yes," Murkowski said. "I would remind the committee the first 10 years are just the start. This is the smallest part of a 40-year period where responsible production raises billions of dollars for our country every year."

"The Congressional Research Service has estimated that, depending on oil prices and the amount of resources, development could raise anywhere from \$48.3 billion to \$296.8 billion over 30 years."

As for environmental impacts, she said, "We can be just as confident that the new technology that is still coming on line will insure responsible development does not harm the environment."

But there will be significant pushback, said ranking committee Democrat Maria Cantwell (D-Wash.) She first turned her fire on Secretary of Interior Ryan Zinke, asking him in a November 1 letter if he thought oil and gas development in ANWR was compatible with the purposes of the refuge. The National Wildlife Refuge System Administration Act requires uses to be compatible with the purposes of a site.

"The Arctic National Wildlife Refuge was specifically created to protect the pristine habitats of iconic species like the polar bear, musk ox, and caribou," Cantwell wrote. "Do you believe that oil and gas development is compatible with the purpose for which the refuge was established, which was to protect wildlife and its habitat?"

Cantwell also took exception at the hearing to Murkowski's assertion that only 2,000 acres of the refuge would be impacted by oil and gas development. "There is no new science that says development will take up a smaller footprint," she said. "This map shows development will take up a significant portion of the refuge 1,800 miles of the Trans Alaska Pipeline, 219 miles of power transmission lines - and so on and so forth."

At the hearing Murkowski brought out the big Alaska guns to testify including Gov. Bill Walker (I-Alaska), Sen. Dan Sullivan (R-Alaska) and Rep. Don Young (R-Alaska).

For the Trump administration Greg Sheehan, deputy director of the Fish and Wildlife Service (FWS,) endorsed Murkowski's bill. "If production is authorized by Congress, the Administration believes this will bolster our nation's energy independence and national security, provide economic opportunity for Alaskans and provide much-needed revenue to both the State of Alaska and Federal government," he said.

"With passage of the budget reconciliation provisions in H Con Res. 71, and its revenue-raising instructions to your committee, the department stands ready to assist Congress as it considers legislation, consistent with ANILCA, to authorize the potential development of the resources contained in this area."

The ultimate test for Murkowski will come on the Senate floor when her committee's ANWR leasing plan will be joined with an overall Republican tax reform plan. She will need 50 votes to gain approval of ANWR leasing from the 52-member Senate majority. And Sens. Susan Collins (R-Me.) and John McCain (R-Ariz.) have in the past opposed ANWR leasing, meaning the loss of one more Republican vote would do in the proposal

gave final Congressional approval to the fiscal 2018 Congressional budget (H Con Res 71). The resolution takes the first step toward authorizing oil and gas leasing in the coastal plain. The Congressional budget is not submitted to the President for signature.

The budget gives the Senate Energy Committee until November 13 to pass follow-up legislation that comes up with \$1 billion to help balance the budget. That \$1 billion almost assuredly would come from ANWR leasing.

The large Republican majority in the House almost guarantees endorsement of ANWR leasing there.

In the House Young, who for four decades in Congress has fought to open the coastal plain of ANWR, was ecstatic about the budget approval. "This budget resolution not only lays the foundation for achieving much needed tax reform, it takes us one step closer to unleashing Alaska's true energy potential through the development of ANWR two issues that will not be easy, but are vitally important for Alaska," he said. "ANWR is absolutely key in this equation, especially as we look to generate new revenue, create new jobs and opportunities for our people, and strengthen our economic outlook."

The follow-up legislation in main is designed to open the way for President Trump's tax reform, with ANWR going along for the ride.

In a closely related development the Interior Department announced October 25 that it will offer for oil and gas lease sale December 6 10.3 million acres of the National Petroleum Reserve Alaska (NPRA), virtually all land in NPRA cleared for possible sale under a land management plan.

Since 1999 BLM has offered in annual sales between 1.4 million and 5.8 million acres in NPRA. Currently, less than 1.4 million acres of NPRA are under lease.

However, NPRA, which is adjacent to the coastal plain of ANWR, has shown increasing promise for oil and gas development. The lead lessee in the area, ConocoPhillips Alaska, has identified significant oil deposits.

Murkowski welcomed the NPRA sale announcement. "Responsible development in the NPRA will strengthen our economy, begin to refill our Trans-Alaska Pipeline System, and generate new wealth to create prosperity and reduce our deficits," she said. "Those are substantial benefits—and this lease sale is a key step to gaining them."

The Wilderness Society objected, pairing the ANWR and NPRA developments. Said the society's Alaska Regional Director Nicole Whittington-Evans, "Combined with efforts to open the Arctic National Wildlife Refuge for oil and gas drilling, this announcement about the Western Arctic reflects the current administration's wholesale approach to turning over America's public lands to the highest bidders for development. They are asking the oil and gas industry to bid on every possible acre."

As for the budget boost to ANWR, the House initially in early October approved a version of H Con Res 71 that assumed leasing in ANWR would produce \$3.5 billion.

There is some question that oil and gas leasing in the coastal plain will produce the Senate's \$1 billion or the House's \$3.5 billion, presumably in the form of bonus bids, as Murkowski noted. (Royalties are likely to be minimal because production wouldn't begin for years.)

The liberal group the Center for American Progress in a recent report doubted that leasing would produce bonus bids of even \$75 million, let alone ~~DOJ 2019 10 00482~~

November 3, 2017

Page 11

The group said bids in the adjoining National Petroleum Reserve (NPRA) since 1999 averaged \$50 per acre.

The center summed up, "If all 1.5 million acres of the Arctic Refuge's coastal plain were sold for oil drilling over the next 10 years at an average bonus bid of \$50 per acre, the federal government would receive \$75 million in revenue. After providing the State of Alaska a required 50 percent share of federal energy royalties, the U.S. Treasury would receive just \$37.5 million."

Matt Lee-Ashley, a veteran in the public affairs office of the Obama administration's Interior Department, was a lead author of the center's report.

The original House budget's estimate of \$3.5 billion was based on an August 2012 report of the Congressional Budget Office (CBO). That report estimated that in 2012 the coastal plain contained 8 billion barrels of oil, compared to the same 8 billion barrels of oil on all onshore federal lands in the lower 48 states.

"CBO expects that opening ANWR to development would yield about \$5 billion in additional receipts over the next 10 years, primarily in the form of bonus payments made by private firms for the opportunity to explore for and develop resources in particular areas," said the report, with half that money going to the federal government and half to the State of Alaska.

Additional revenues near the end of the 10-year period would presumably come from royalties. However, CBO acknowledged in its report that it assumed a price of oil from "under \$100 per barrel to over \$150 per barrel." The price of oil presently is about \$52 per barrel. The CBO report is available at: <https://www.cbo.gov/publication/43527>.

The Center for American Progress report is available at:
<https://www.americanprogress.org/issues/green/news/2017/10/10/440559/arctic-national-wildlife-refuge-101/>.

Perhaps most important, the Republican budget strategy would allow the Senate to approve the tax/ANWR package by a 50-vote majority in a giant reconciliation bill, not the 60 votes needed when a filibuster is in play.

However, there is no guarantee that Senate leadership has the votes to approve the ANWR provision, let alone the greater budget. The GOP only has a two-vote majority and Sens. Thad Cochran (R-Miss.) has been ailing and several other moderate Republicans are reportedly on the fence, such as McCain and Collins.

The Trump administration is an enthusiastic supporter of ANWR leasing. As PLN has reported the Interior Department intends to write a regulation soon that would lead to oil and gas exploration within the coastal plain of ANWR.

In the Interior Department campaign for ANWR development a memo from Acting Fish and Wildlife Service (FWS) Director James W. Kurth tells the Alaska regional director to prepare a rule that, when completed, "will allow for applicants to [submit] requests for approval of new exploration plans."

FWS in the 1980s first authorized exploration in ANWR over an 18-month period to help estimate oil and gas reserves in the 1.5 million-acre coastal plain. Environmentalists and their supporters, including the Obama administration, have argued that the 1980 Alaska National Interest Lands Conservation Act (ANILCA) only authorized the one exploration program. Only Congress is allowed to authorize oil and gas development under ANILCA.

The Obama administration recommended the coastal plain be designated wilderness, a recommendation that stays in place unless Congress ov**DOIu2019i1000483**

Trump administration removes the wilderness recommendation.

Transfer of grouse management to states gets an airing

Some but not all western states October 25 endorsed greater delegation to them of responsibility for managing the greater sage-grouse at a hearing of the House Natural Resources Committee.

Idaho was particularly supportive of delegation. Said Rep. Scott Bedke (R), speaker of the House in Idaho, "There seems to be a growing trend in federal resource planning of ignoring the needs of the Western States, to say nothing of the decades of wisdom and practical experience we can offer."

He added, "Let me speak more specifically: Catastrophic wildfire is the top concern in Idaho sage grouse habitats. Our plans are designed to address the factors which can result in catastrophic wildfire. Federal sage-grouse plans not only ignore Idaho's science and our decades of experience in addressing these contributing factors, but they will actually make the situation worse."

But a witness representing Montana said that his state supported the existing Obama administration regime governing the greater sage-grouse in the West, i.e. 98 land use plans written by BLM and the Forest Service in cooperation with the states.

John Tubbs, director of the Montana Department of Natural Resources, said the Trump administration would be well advised to follow the Obama finding that listing the sage-grouse was not necessary at this time. He also questioned the need for Secretary of Interior Ryan Zinke to rewrite the 98 plans.

"It is imperative that we avoid prolonged and unnecessary work that would unravel the foundation of the 2015 'not warranted' finding to the point that we all risk a result we worked so hard to avoid," he said. "Adaptive implementation of the plans can reduce uncertainty for our partners, industry, and working ranch families who take care of the land and the wildlife on our behalf and can help address inconsistencies efficiently."

Secretary Zinke, commodity users of the public lands and many western Republicans are eager to tear up the Obama administration sage-grouse plans in order to transfer to states greater management responsibility.

Said committee chairman Rob Bishop (R-Utah), "[T]he federal government under the Obama administration insisted on managing Greater Sage Grouse recovery with a Washington, D.C., one-size-fits-all approach that fails miserably to address the individual management challenges present in each state. The purpose of today's hearing is to provide further evidence that state and local control leads to lasting success. States have consistently proven to be masters at caring for their own lands and wildlife, and sage grouse is no different."

Ranking committee Democrat Raúl M. Grijalva (D-Ariz.) charged that committee Republicans know that legislation to formally transfer authority to manage the sage-grouse to states is a non-starter. Grijalva's office said in a statement that Bishop "has no confidence that a bill attacking proper management of sage-grouse could withstand scrutiny from sportsmen's groups, Republican governors and the American people."

The Interior Department October 11 formally announced that it intends to revise the 98 Obama plans, presumably to loosen up land uses on affected lands. In a *Federal Register* notice BLM said it intends to amend "some, all or none" of the plans. The bureau will begin by taking public recommendations on possible revisions for 45 days. Completing revised plans would take years.

BLM said it was soliciting advice in part because of a recent district court decision that requires the agencies to prepare a supplemental EIS on the designation of sage-grouse focal areas where mining is forbidden. However, the court did not halt implementation of the plans.

In addition to launching the revision of the sage-grouse plans BLM cancelled a proposed withdrawal of 10 million acres from hard rock mining to protect the sage-grouse.

"The proposal to withdraw 10 million acres to prevent 10,000 from potential mineral development was a complete overreach," said Acting BLM Director Mike Nedd.

The Obama administration segregated the 10 million acres from the mining law on Sept. 24, 2015, for two years. The two years has ended. On Dec. 30, 2016, BLM published a draft EIS on a 20-year withdrawal with public comments accepted until March 28 of this year. That, of course, opened the way for the Trump administration to cancel the proposed withdrawal.

Secretary Zinke has offered broad clues as to what he thinks BLM should do in revising the plans. In an August 7 memo he directed BLM to make fundamental changes that would at once loosen restrictions on commodity users and defer more to state policies.

High on Zinke's list of changes is direction to "Modify or issue new policy on fluid mineral leasing and development" and "Work with the States to improve techniques and methods to allow the States to set appropriate population objectives."

The western governors have not been unified in their demand for wholesale changes in the 98 plans. On May 26 Wyoming Gov. Matt Mead (R-Wyo.) and Colorado Gov. John Hickenlooper (D-Colo.) wrote Zinke and asked him NOT to change course. In addition Montana has generally supported the plans.

The Obama administration sage-grouse policy, issued on Sept. 22, 2015, did not list the greater sage-grouse as an endangered or threatened species as western states had feared. Instead, it directed BLM and the Forest Service to implement 98 records of decisions to protect the bird. The plans apply to 67 million acres across 10 western states.

If as promised the Trump administration's Interior Department revises the 98 sage-grouse plans, that action may affect a slew of lawsuits against the Obama plans.

As a first order of business the new plans may render moot lawsuits brought by the states of Idaho and Utah and by the oil and gas industry. Those lawsuits said the Obama plans were too limiting; the Trump plans would be less limiting.

But the changes to the plans may well revive an environmentalist lawsuit that charges the Obama plans weren't limiting enough. Even less limiting plans from the Trump administration would not only lead to an amended lawsuit but it might also bring on new litigation.

Draft DoI strategic plan projects end to APD backlog

A draft Interior Department strategic plan leaked to the media last week contains few specific goals, other than to accelerate oil and gas paperwork by hard dates.

In following the Trump administration's overall policy of hiking up oil and gas DOI-2019-10-00485

energy development the draft plan would have BLM eliminate completely a backlog of applications for permits to drill (APDs) by Sept. 30, 2019, says the plan obtained by the *Nation* magazine.

At the end of fiscal 2017 BLM said there was a backlog of 2,552 unprocessed APDs.

In addition the plan would have BLM by Sept. 30, 2019, "process 80% of Expressions of Interest to lease public lands for oil gas or mineral extraction within 180 days."

For most other commercial uses of the public lands, such as hard rock minerals, grazing and timber the draft plan is noncommittal about specific goals and, indeed, mostly talks about balance.

For instance, about grazing the draft makes room for a target percentage of grazing permits processed but qualifies, "as consistent with applicable resource management plans."

The draft anticipates Secretary of Interior Ryan Zinke will announce the completion of a final document in December to cover all department activities during the five fiscal years between 2018 and 2022.

In a related development Zinke on October 25 published a report on energy regulations he intends to reverse/modify (see related article page 6.)

Although the separate, draft strategic plan recommends for the most part balance between use and protection, it drew immediate fire from the Sierra Club for being pro-development.

"The news out of Interior today highlights exactly where Secretary Zinke's priorities lie: not with protecting our public lands for future generations or ensuring that energy development is compatible with the health and safety of our communities, but with enriching his friends and giving handouts to corporate polluters at all costs," said Lena Moffitt, senior director of the Sierra Club's Our Wild America Campaign.

The energy industry and its western Republican allies continue to complain that BLM and its federal agency partners take too long to process APDs. To that end House Natural Resources Committee Republicans have put together a draft bill to turn over APD work to states, if states so desired.

House Subcommittee on Energy Chairman Paul Gosar (R-Ariz.) lauded the draft bill at an October 13 hearing. He said it would lead to an increase in energy development on onshore public lands, and an increase in royalties for both federal and state governments.

But committee Democrats countered that industry is not developing permitted leases now. Led by ranking House Natural Resources Committee Member Raúl M. Grijalva (D-Ariz.) they said last week, "Companies typically file for considerably more permits than they need, and by the end of fiscal year 2016 the industry held a total of 7,950 approved permits still waiting to be used. Contrary to frequent industry and Republican complaints, the number of pending APDs at the end of fiscal year 2017 stood at only 2,552, the lowest in at least a dozen years."

In one other area of specifics dealing with endangered species the draft DoI strategic plan anticipates that by September 30, 2018, all Species Status Assessments developed by the Fish and Wildlife Service will have at least two state representatives. Those assessments are used by the service in listing or delisting decisions under the Endangered Species Act.

As for overall planning goals the draft plan calls for balance. It says, "The DOI is undertaking the challenge to review and improve its planning process in ways that can best meet the sometimes-conflicting uses for public lands. The DOI will strive to enhance public participation and input to the planning processes, engage our state and local government partners, provide open and understandable decision-making, expedite the decision-making process so that implementation is not delayed, and ensure that public access and use is appropriately built into every land use plan."

The document is available at:

<http://www.documentcloud.org/documents/4117074-Leaked-Draft-DOI-Strategic-Plan-Watermark.html#document/p1/a384536>.

Three Republican senators block ESA delegation proposal

The Senate October 19 rejected a proposal to remove from federal control management of species wholly within one state under the Endangered Species Act (ESA).

In effect the amendment from Sen. Mike Lee (R-Utah) would have opened the way for states to regulate endangered species that don't cross state borders.

The vote was a close 49-to-51 with three Republicans in opposition. The three Republicans who voted against - Sens. Lamar Alexander (R-Tenn.), Susan Collins (R-Me.) and Bob Corker (R-Tenn.) may set a precedent for more ambitious ESA reform legislation, as well as other natural resources legislation.

In the pipeline the House Natural Resources Committee October 3 approved five ESA bills that would revise substantially the law, although individually the bills would have limited impacts. Most of those bills enjoyed some Democratic support, so they might gain Senate report. But more sweeping reform as championed by western Republicans would have a harder time of it in the Senate.

Lee argued on the Senate floor that the U.S. Constitution limits the federal government's powers primarily to interstate transactions; it leaves to the states oversight of intrastate activities.

"(The constitution) does not give the Congress the power to regulate any and every activity occurring intrastate," he said. "Yet, for the last few decades, under the Endangered Species Act, this very power has been abused to regulate species that exists only in one place, only within one State, never crossing State lines, never forming any part of any channel or instrumentality of interstate commerce."

But Sen. Tom Carper (D-Del.), ranking minority member on the Senate Environment and Public Works Committee, disagreed, arguing that the majority of species are intrastate and many are deserving of federal protection.

"Seventy-seven percent of all listed species, including the polar bear, the Florida panther, and many more are found only in one State, and for an island State like Hawaii, all of its species would lose protection," he said.

The House Natural Resources Committee October 3 approved these ESA bills: HR 1274, which would make listing data available to states prior to a listing (approved 22-to-14); HR 424, which would forbid litigation against the delisting of the Wyoming population of the gray wolf (approved 26-to-14); HR 717, which would include economic factors in listing decisions (approved 22-to-13); HR 2603, which would bar nonnative species from being considered as imperiled under the ESA (approved 22-to-16); and HR 3131, which would limit awards to environmental

plaintiffs in ESA litigation (approved 22-to-16).

In the Senate Sen. John Barrasso (R-Wyo.), chairman of the Senate Environment and Public Works (EPW) Committee, is taking the lead in revising the ESA.

Barrasso led off the Republican campaign with an initial Senate EPW committee oversight hearing February 15. Barrasso laid out this bottom line at the hearing: "Here's the problem. The Endangered Species Act is not working today and we should be concerned when the (ESA) fails to work. States, wildlife managers, home builders, construction companies, farmers, ranchers and other stakeholders are all making it clear that the (ESA) is not working today."

A central complaint of critics of the law is the legal deadline for FWS to act on petitions to list species for protection. FWS must first determine within 90 days if a petition merits study and, if so, make a listing determination within a year.

That the Republican Congress, in concert with the Trump administration, intends to make significant changes in the law is a given. But the path in the legislative process won't be smooth because the ESA traditionally has enjoyed some Republican support and strong public support, viz. the Lee amendment.

The Republican are particularly perturbed by two overarching agreements the Obama administration struck in 2011 with environmental groups to settle lawsuits. The environmentalists said FWS and the National Marine Fisheries Service were too slow in acting on 1,000 listing petitions.

In the first agreement on May 17, 2011, FWS struck a deal with WildEarth Guardians to process petitions for 251 candidate species. In return WildEarth, which had been plastering FWS with listing petitions, agreed to limit the number of future petitions. Among the 251 species is the Greater sage-grouse. On July 12, 2011, FWS reached a second agreement with the Center for Biological Diversity to protect 757 species by 2018.

Spending bill with DoI money still hung up in Senate

Until the health of Senate Appropriations Committee Chairman Thad Cochran (R-Miss.) improves, fiscal year 2018 spending bills may continue to stall in his panel.

That increases the possibility that the Senate won't complete eight remaining domestic bills including a public lands measure this fall, leaving crucial negotiations up to House and Senate appropriators in December. The House approved its version of a bill (HR 3354) on September 14.

The continued incapacitation of Cochran, 79, forced the cancellation of a scheduled committee mark-up a fortnight ago of the fiscal 2018 Interior and Related Agencies appropriations bill. The subcommittee on Interior had been scheduled to mark up October 17 and the full appropriations panel October 19.

When Cochran did not show up for those mark-ups, he was reportedly suffering from a urological problem. He did make it to the Senate floor October 19 for approval of a Congressional budget.

When Cochran appeared for the budget vote he was said to be frail and disoriented. He needed a staff member to guide him into the Senate chamber and appeared confused about how he was supposed to vote.

On December 8 a temporary spending measure (PL 115-56 of September 8) is due to expire. Senators would like to at least have a draft bill introduced to use as a

negotiating tool with the House and the Trump administration on fiscal 2018 spending.

Senate subcommittee leaders in past years have introduced such drafts, as the subcommittee on Interior and Related Agencies did in 2013 for a fiscal 2014 appropriations bill. That measure was eventually completed in January 2014 in a giant, all-department spending measure.

If and when the Senate committee addresses a fiscal 2018 spending bill, it will have major obstacles to overcome. First and foremost, the committee will use a significantly higher spending cap than in the House-passed bill. The Senate committee would have \$600 million more to work with.

However, the Senate cap for the Interior and Related Agencies bill is still \$224 million less than a final fiscal 2017 appropriation of \$32.224 billion.

On the all-important wildfire front the Senate panel must come up with some \$4 billion for wildfire suppression and fire prevention programs. In addition the panel will surely be asked to transfer extraordinary emergency wildfire spending costs out of line appropriations and into disaster spending, although that may be a responsibility of the Senate Budget Committee.

Senate Republican money committee members will almost certainly demand several public lands riders. In the past the committee has supported riders that would ban the listing of the sage-grouse as threatened or endangered under the Endangered Species Act and forbid the Interior Department from delisting the gray wolf in Wyoming from the Endangered Species Act. Those actions are extreme long-shots in the Trump administration, but still.

The committee will also be asked to set aside money for the payments-in-lieu of taxes (PILT) program. It received \$465 million in fiscal 2017 and the House has approved the same number for fiscal 2018. Congress has occasionally paid for PILT outside of appropriations bills. The Trump administration had recommended \$397 million for PILT.

Sen. Lisa Murkowski (R-Alaska) chairs the Senate subcommittee on Interior and Related Agencies appropriations and Sen. Tom Udall (D-N.M.) is the ranking minority member.

If the appropriations committee does approve the Interior and Related Agencies spending bill soon, it is unclear what would happen after that procedurally. Complicating things, the House in passing its version of HR 3354 September 14 packaged the Interior and Related Agencies bill with seven other domestic bills.

In addition the House and Senate are expected to package the eight domestic bills and four natural security bills into one measure in December, when the hard spending decisions are to be made.

The Senate Appropriations Committee spending cap for the fiscal 2018 Interior bill is \$32 billion, compared to \$31.4 billion in the House and to a Trump administration recommendation of \$27.1 billion.

The House-approved version of HR 3354 includes the following **numbers**, compared to fiscal 2017 allocations:

For BLM resource management and the National Forest System the House approved modest decreases. For BLM resource management the House approved a decrease of \$20 million, from \$1.095 billion in fiscal 2017 to \$1.075 billion in fiscal 2018. For the National Forest System the committee also approved a decrease of \$20 million, from \$1.513 billion in fiscal 2017 to \$1.493 billion in fiscal 2018.

The House allocations for some public lands programs were a little higher than those numbers would at first suggest, because the panel reduced allocations to federal land acquisition under the Land and Water Conservation Fund (LWCF). Thus the National Forest System allocation actually increased by a small amount outside of LWCF acquisitions.

As has become customary, wildfire suppression is eating up a significant portion of the subcommittee's \$31.4 billion allocation, \$3.4 billion, or about 11 percent of the total. And the House did not act on recommendations that it attempt to shift emergency wildfire costs out of the bill and into disaster funding.

RIDERS: The House-passed bill includes provisions to ban implementation of a wetlands regulation; ban listing of the greater sage-grouse as threatened or endangered under the Endangered Species Act; and ban the delisting of the gray wolf in Wyoming.

The legislation would also forbid the listing of any wolf species in the lower 48 states as threatened or endangered under the Endangered Species Act.

On the floor the House approved amendments that would forbid the spending of any money by BLM to implement a methane emissions rule, oil and gas measurement orders, and an oil and gas site security order. And the House adopted an amendment to forbid EPA from spending money on a methane emissions rule of its own.

The House did reject one amendment related to the public lands that would have authorized EPA and the Corps of Engineers to implement an Obama administration Waters of the United States rule. The House sided with a Bush administration rule.

IBLA decisions

(We post current Interior Board of Land Appeals decisions at our website, <http://www.plnfpr.com/ibla.htm>. IBLA may be contacted at: Interior Board of Land Appeals, 801 North Quincy St., MS 300 QC, Arlington, VA 22203. Phone (703) 235 3750.)

Subject: Oil and gas bond.

BLM decision: BLM will demand an increase in a reclamation bond when there is a change in status of an operator's wells, i.e. well abandonment.

Appellant lessee: BLM's demand is excessive; current bond is sufficient.

IBLA decision: Affirmed BLM.

Case identification: *Mar/Reg Oil Company, 192 IBLA 001.* Decided October 31, 2017. Seven pages. Appeal from a decision of the Utah State Office of BLM determining that an oil and gas operator must furnish an increased statewide oil and gas bond. UTB000019.

IBLA argument: IBLA Administrative Judge James K. Jackson affirmed a BLM decision increasing an oil and gas operator's statewide reclamation bond from \$25,000 to \$85,000. BLM increased the bond because the operator temporarily abandoned a well, leaving 14 of its 19 wells in the Canyon Country of Utah non-producing. BLM based the increase on an analysis performed by a petroleum engineer. The appellant operator argued that it could plug and abandon the one well for much less than the existing bond, let alone for the higher bond. But judge Jackson said the lessee offered no proof that the existing bond should remain, other than a statement that plugging and reclamation could be done for \$10,000. So, concluded Jackson, "When challenging a bond increase based on a BLM estimate of plugging, abandonment, and reclamation costs, the appellant must submit an itemized estimate of such costs that was prepared by a qualified expert. Since (the operator) has not submitted such an estimate or made a similar showing in this case, it has failed to carry its burden to show BLM erred in estimating applicable costs and requiring an increase of its statewide bond."

Notes

USDA energy plan hits withdrawal. Responding to President Trump's order to promote energy production in the country, the Department of Agriculture has prepared a report recommending fifteen policy changes affecting the Forest Service. Prominent among them is the cancellation of a January 21, 2012, withdrawal of a million acres.

from uranium mining claims on public lands near Grand Canyon National Park. The withdrawal applied to 350,000 acres of national forest and 650,000 acres of BLM land. Says the department report, "Adoption of this recommendation could re-open lands to mineral entry pursuant to the United States mining laws facilitating exploration for, and possibly development of, uranium resources." Says The Wilderness Society, "The Forest Service's recommendations will turn iconic places like the Grand Canyon into industrial zones and put drinking water at risk for 66 million people across the country." Said Ranking House Natural Resources Committee Member Raúl M. Grijalva (D-Ariz.), "President Trump wants to turn one of the world's greatest natural wonders into a strip mine." BLM put together the withdrawal and would have to undo it on behalf of the Forest Service. In other recommendations in the Department of Agriculture report are a number of steps to accelerate the processing of energy permits and limit environmental reviews. Again, BLM would have responsibility for making most of the changes. Trump issued his executive order requesting agency input on accelerating energy development on March 28 in Executive Order 13783. The Department of Agriculture report is available at: https://www.eenews.net/assets/2017/11/01/document_pm_05.pdf.

State-run energy bill may move. House Natural Resources Committee Chairman Rob Bishop (R-Utah) November 1 said he would couple an onshore energy bill with offshore oil and gas expansion proposals. The *Washington Examiner* reported that Bishop intends to move the whole package to the House floor "in the coming weeks." The draft onshore bill, considered in a hearing by Bishop's committee October 13, would turn over to states authority to approve oil and gas drilling permitting on onshore public lands. To obtain such powers under the bill a state would first have to gain approval from the federal government of a management program. In addition, if a state had a hydraulic fracturing regulation in place and most do the federal government would not be able to regulate the practice. Bishop told the *Examiner*, "This comprehensive overhaul of upstream energy policy creates the regulatory certainty that is needed to spur economic investment on federal lands."

Enviros say O&G, sage-grouse don't mix. Three environmental groups October 31 filed an appeal to the Interior Board of Land Appeals (IBLA) against the offering by the BLM Utah State Office of nine tracts for oil and gas lease sale near sage-grouse habitat. Although BLM offered nine tracts for lease in the September 12 sale, it received bids on only three, covering 4,102 acres. The small number of acres is not as important, said the groups led by the Western Watersheds Project, as the location of the parcels near the habitat for the Sheeprocks population of the greater sage-grouse. "Even the most carefully controlled industrial intrusions at the edges of key habitats can cause grouse to abandon undeveloped habitats up to 3 miles away," said Erik Molvar of Western Watersheds Project. "Given the precariously low sage grouse population in the Sheeprocks area, the BLM has no business leasing these lands to become a future oil and gas field." The September Utah sale pales in comparison in size with a scheduled December sale of 94,000 acres. Environmentalists are already objecting to the December sale because of inclusion of tracts near Dinosaur National Monument and in the San Rafael Swell in areas they have recommended for wilderness. The appeal of the September sale is available at: http://biologicaldiversity.org/programs/public_lands/energy/dirty_energy_development/oil_and_gas/pdfs/Sheeprocks_Appeal_and_Petition_for_Stay.pdf.

PILT promise in Hill budget. The final Congressional budget (H Con Res 71) approved by the House October 26 directs authorizing committees to approve full, permanent funding for the payments-in-lieu of taxes (PILT) program. Sen. Tom Udall (D-N.M.) persuaded the Senate to approve the PILT provision just before the Senate passed H Con Res 71 October 19. The Congressional budget does not go to the President. An Udall press release says his PILT amendment "directs Congress to fully fund" PILT. However, the language of the provision also says that Congress should do so only if legislation didn't increase the federal deficit. The Senate approved Udall's amendment by 58-to-41 with some western Republicans opposing. Indeed, Senate Budget Committee Chairman Mike Enzi (R-Wyo.) said the DOI 2019-10-00491

was unnecessary because H Con Res 71 already contained a provision that would allow for increased spending for PILT, if such spending wouldn't increase the budget, although it didn't direct line committees to make PILT permanent. The provision already in the bill would also allow for more funding for the Secure Rural Schools (SRS) program. PILT is in better shape than SRS with a \$465 million appropriation in fiscal 2017, which is the same appropriation the House approved for fiscal 2018 on September 14. But Congress in a fiscal 2017 spending bill (PL 115-31 of May 5) approved no money for SRS. And the House September 14 approved the fiscal 2018 spending bill (HR 3354) with no money for the program. SRS was last authorized in fiscal year 2015, with \$300 million in payments allocated in March of 2016.

O&G leasing near Yellowstone? The WildEarth Guardians environmental group is charging that the Montana State Office of BLM intends to offer for lease in March tracts "on the doorstep" of Yellowstone National Park. Those lands, said the group, are adjacent to Livingston, Mont., a gateway city to Yellowstone. However, Livingston is 60 miles from the park. The group said October 25 that other sensitive areas in the state are at risk in the sale as well, including the Beartooth Front. In announcing the sale of 110 nominated tracts in March the Montana BLM State office said the sale was covered by an environmental assessment and the sale is in accordance with all applicable approved resources management plans and plan amendments. The proposed Montana sale is one of many proposed sales around the West that environmentalists are objecting to. As we have reported in recent issues of *PLN* environmentalists are preparing to object to big oil and gas lease sales in December in Wyoming, Utah, Colorado, Montana, Nevada and New Mexico. In exhibit one WildEarth Guardians earlier in October protested a scheduled December sale of 94,000 acres in Utah. Guardians says some of those parcels are too close to Dinosaur National Monument or are inside the San Rafael Swell.

Palen solar project revived. BLM has completed a draft EIS and plan that would make way for the oft-postponed Palen Solar project in Riverside County, Calif. The project has gone through several ownerships since first proposed in 2007 and BLM has prepared several analyses of the project. Now it appears that the most recent owner, EDF Renewable Energy, is ready to go ahead with the project that would occupy 4,200 acres of BLM land. Construction of the 500 MW solar photovoltaic facility is expected to begin next year with commercial operations phased in between 2018 and 2021. More information is available at: <https://www.blm.gov/press-release/blm-seeks-public-input-draft-plan-palen-solar-photovoltaic-project>.

Boxscore of Legislation

Fiscal year 2018 appropriations

HR 3354 (Calvert). House approved September 14. Would reduce spending for most public lands programs, but not as much as the Trump administration has requested.

Fiscal year 2017 appropriations (full year)

HR 244 (Cook). President Trump signed into law May 5 as PL 115-31. Appropriates roughly same amounts of money as fiscal 2016. Was stripped of riders.

Rule restrictions

HR 21 (Issa). House approved January 4. Would allow Congress to revoke groups of regulations at one time with majority vote (no Senate filibuster.)

HR 5 (Goodlatte). House approved January 11. Would subject BLM and FS plans to major economic impact analysis.

(*Specific rules*) HJ Res 36 (Bishop), HJ Res 44 (Cheney), HJ Res 35 (Young. President Trump signed into law March 27 (PL 115-12) a resolution reversing a BLM planning rule (HJ Res 44). Trump signed into law April 3 a resolution (PL 115-20) reversing a FWS hunting rule in Alaska (HJ Res 35). The Senate defeated 51-to-49 a resolution

that would have reversed a BLM methane emissions rule (HJ Res 36).

Federal land transfers

H Res 5 (McCarthy). House approved January 3. Would not require economic offsets if Congress tried to transfer federal lands to states, local governments or tribes.

HR 232 (Young). Young introduced January 3. Would allow states to acquire up to 2 million acres of national forest.

National monument restrictions

S 33 (Murkowski), S 132 (Crapo), HR 3990 (Bishop). House committee approved HR 3990 October 11. Murkowski introduced January 5. Crapo introduced January 12. Bishop would limit President's monument designation authority in several ways. Murkowski would require Congressional and state approval of new monuments. Crapo would require Congressional approval.

New national monuments

HR 360 (Grijalva). Grijalva introduced January 6. Would establish a Greater Grand Canyon Heritage National Monument.

Wildfire

HR 2862 (Simpson), HR 2936 (Westerman), S 1571 (Crapo). Simpson introduced June 8. House approved HR 2936 November 1. All bills would revise emergency fire spending; Westerman would also accelerate timber sales.

Greater sage-grouse

HR 527 (Bishop), S 273 (Risch). Bishop introduced January 13. Risch introduced February 1. Would largely revoke federal sage-grouse management policy and give the job to the states.

Wolf in Wyoming

HR 424 (Peterson, Cheney), S 164 (Johnson). Peterson introduced January 10. Johnson introduced January 17. Would maintain the delisting of the gray wolf in Wyoming, overcoming a judge's decision. (In House committee's fiscal 2018 approps bill.)

Critical minerals

HR 520 (Amodei), S 145 (Heller). House hearing March 21. Senate hearing March 28. Would have federal land managers establish time lines for acting on all mineral permits.

Mine law reform

S 1833 (Udall). Udall introduced September 19. Would establish a hard rock royalty and tougher environmental standards.

Energy bill (omnibus)

S 1460 (Murkowski). Murkowski introduced June 28. On Senate agenda. Would revise dozens of energy policies.

Energy policy limitations

S 737 (Markey), S 800 (Cantwell), HR 1819 (Cartwright), S 750 (Merkley), S 987 (Merkley). Markey introduced March 27. Cantwell and Cartwright introduced March 30. Merkley introduced March 28. Merkley introduced April 27. Markey would increase coal royalty, Cantwell and Cartwright would forbid coal self-bond, and Merkley would forbid new fossil fuels leasing from the public lands.

County assistance

S 1027 (Hatch), HR 2340 (Rodgers). Hatch, Rodgers introduced May 3. Would reauthorize Secure Rural Schools program for two years.

Resource Public Lands News
Volume 42 Number 21
November 3, 2017

Public Lands News is published by Resources Publishing Co., P.O. BOX 41320, Arlington, VA 22204. EIN 52-1363538. Phone (703) 553-0552. FAX (703) 553-0558. E-mail james.b.coffin@verizon.net. Website: <http://www.publiclandsnews.com>.

In this issue. . . .

Congress moving on fire assistance. House approves bill to expedite hazardous fuels projects. Congress also completes pay back for FY 2017 emergency suppression expenses. Lots of other measures in works.

Page 1

Trump says he will shrink Utah monuments. Gov. Herbert expects Trump will reduce Bears Ears from 1.35 million acres to 110,000 acres.

Page 4

Zinke lays out energy rule ambitions. Lists steps DoI is taking on hydraulic fracturing, methane emissions, oil and gas orders, etc.

Page 6

Senate moving quickly on ANWR authorization. Murkowski committee holds hearing just days after Congressional budget opens way for big vote.

Page 8

Some states want sage-grouse authority. Idaho is all for it. But Montana asks House panel to give 98 Obama land use plans a chance.

Page 12

Leaked DoI strategic plan short on detail. Other than a firm deadline for BLM to catch up on oil and gas APD backlog. Final in December?

Page 13

Senators barely reject ESA amendment. Provision would have required legislation to exempt intrastate species. Three GOP votes against.

Page 15

Cochran's health holds up money bills. Chairman appeared for budget vote but was unsteady. His illness has forced spending bills delay.

Page 16

IBLA decisions.

Page 18

Notes.

Page 18

Boxscore of legislation.

Page 20

Senate, House are addressing fire prevention, funding

Congress is moving swiftly if not always in one direction to address both prevention of wildfires and the payment for suppression of fires.

In step one the House November 1 approved a lead bill (HR 2936) that would speed environmental reviews prior to hazardous fuels reduction projects, i.e. timber sales.

In addition the bill would authorize the President to establish a special fund to supplement regular appropriations to fight wildfires.

That latter provision, though, falls short of a proposal in bipartisan legislation (HR 2862, S 1571) to transfer wildfire suppression costs above the 10-year average out of agency appropriations bills and into disaster spending. Rep Mike Simpson (R-Idaho) and Sen. Mike Crapo (R-Idaho) are the lead sponsors of those bills.

Rep. Bruce Westerman (R-Ark.), sponsor of the House-passed hazardous fuels bill, praised his measure. "We need not look any further than the communities across Montana, California, and other western states ravaged by wildfires this year to see how years of unmanaged federal forests have wreaked havoc on our environment polluting our air and water and destroying thousands of acres of wildlife habitat," he said. "The Resilient Federal Forests Act would provide the Forest Service with new authorities to provide protection to America's forests by reducing the risks of wildfires through proper management techniques."

A few western Democrats voted for the Westerman bill, giving it political cover in the House, including Reps. Kurt Schrader (D-Ore.) and Jim Costa (D-Calif.). However, the Senate may be a closer contest, with a number of Republican senators regularly siding with environmentalists on natural resource issues.

Although a few House Democrats supported HR 2936 the majority of Democrats objected to limits on environmental reviews, endangered species reviews and litigation. The final votes on the bill was 232-to-188.

Said Ranking House Natural Resources Committee Member Raúl M. Grijalva (D-Ariz.), "The bill includes sweeping waivers of provisions in (the National Environmental Policy Act), the (Endangered Species Act) and the Equal Access to Justice Act that Senate leaders of both parties already rejected in the previous Congress. House Republicans know the bill has no future in the Senate, and are pushing it anyway as a purely ideological exercise."

As for emergency wildfire spending, in a committee report the Democrats said the special appropriations bill fund is inadequate. "While we appreciate the acknowledgment that we have to do something to address the funding mechanism for wildfire, the fix in this bill needs work," they said. "It fails to freeze the ten-year average, like the bipartisan Wildfire Disaster Funding Act sponsored by Representative Simpson of Idaho. Without this adjustment, spending on wildfire will never get under control."

Meanwhile, the Senate gave final approval October 24 to a disaster-spending bill (HR 2266) that includes a \$576.5 million payback to the Forest Service and Interior Department for emergency wildfire expenses in fiscal year 2017. President Trump signed it into law October 26 as PL 115-72.

But that law does not address the continuing problem of wildfire suppression costs that far exceed appropriations, forcing agencies to borrow money from line programs, including fire prevention.

However, at least one more disaster-spending bill is in the pipeline that could provide an opportunity to address wildfire borrowing by

transferring larger-than-normal wildfire expenses to disaster spending, and out of appropriations bills.

Ten western senators – eight Democrats and two Republicans – last week asked Senate leaders to include a fire borrowing fix in HR 2266, to no avail, but their request may be given more deference in coming hurricane disaster bills.

Led by Sens. Ron Wyden (D-Ore.) and Crapo, their letter said, “While it is absolutely necessary that the agencies responsible for fighting wildfires receive the funds they need for fiscal year 2017, this is only the first step to solving this long-term problem. In addition to emergency funding, the Forest Service and DOI require stable, reliable funding to help prevent wildfires before they begin.”

For now Congress is content to refund federal agencies for fire borrowing in fiscal 2017. The emergency bill, as requested by the Trump administration, puts up \$526.5 million for the Forest Service and \$50 million for the Interior Department. The law specifies that all the money is to be applied to fiscal 2017 expenses.

On the wildfire prevention front in the Senate, different groups of senators are working on competing legislation. On October 19 Republican and Democratic senators teamed up to introduce legislation (S 1991) that would establish an aggressive new program to prevent major wildfires.

The bill would (1) allocate \$100 million per year to at-risk communities to prepare for wildfires and (2) establish a pilot program in the Forest Service and the Interior Department to carry out fire-prevention activities on high-risk lands. Sens. Maria Cantwell (D-Wash.) and Crapo were among the lead sponsors.

Then on October 25 the Senate Environment and Public Works (EPW) Committee held a hearing on separate draft legislation put together by four Republican senators that would limit environmental reviews of hazardous fuels projects.

The bill from Sens. John Barrasso (R-Wyo.), Orrin Hatch (R-Utah), John Thune (R-S.D.), and Steve Daines (R-Mont.) would establish several new categories of categorical exclusions from environmental reviews, including an exclusion of “immediate action in critical response situations due to disease and insect infestations, threats to watersheds, and other high-risk areas.”

Said Barrasso, chairman of the EPW committee, “State and local forest managers need the flexibility to remove trees and dead wood that fuel these terrible fires. Our bill will provide commonsense tools and cut unnecessary red tape. We must act quickly to address the risk these fires pose to both people and wildlife.”

The two new Senate bills address wildfire prevention but not wildfire borrowing.

The already urgent national wildfire crisis was worsened earlier this month with catastrophic fires in northern California.

Although Congress is now repaying federal agencies for their fiscal 2017 wildfire costs, the damage has already been done because the agencies

were forced to take money out of hazardous fuels reductions, thus leaving dry, overgrown forests ready to explode.

There is not much appropriations help in the pipeline for hazardous fuel reductions. The House approved a fiscal year 2018 appropriations bill (HR 3354) September 14 that would put up only \$5 million more than the fiscal 2017 appropriation for hazardous fuels. The House approved \$575 million for prevention efforts in fiscal 2018, compared to the \$570 million fiscal 2017 level.

The Senate Appropriations Committee had planned to take up HR 3354 in mid-October but canceled scheduled meetings because of the illness of committee chairman Thad Cochran (R-Miss.)

On the emergency wildfire borrowing front, the lead Senate bill (S 1571) from Crapo now before the Senate Banking Committee would help out by transferring out of appropriations bills all emergency wildfire costs greater than the 10-year average. But S 1571, designed primarily to extend a National Flood Insurance Program, does not address hazardous fuels elimination.

Rep. Betty McCollum (D-Minn.) said the House October 12 missed the boat by not including a fire fix in the disaster assistance bill, HR 2266. "As the duration and severity of wildfires grows, costs will continue to rise," she said. "Unfortunately, once again we have missed the opportunity to fix the way the Federal Government funds wildfire suppression. Let me be clear: the next supplemental must include a legislative fix for wildfire spending, and it must adequately support the Department of the Interior and its vital efforts to help our country rebuild from the recent fires and hurricanes."

At press time various estimates put the fire damage in California at 41 people dead, 8,400 buildings destroyed, 100,000 people evacuated from their homes, \$65 billion in property losses and the sickening of citizens 100 miles from the fires.

As of the end of fiscal 2017 the Forest Service said it had spent \$2.4 billion on fire fighting but had an appropriation of just \$1.8 billion. The emergency appropriations bill should pay back the agency for most of its costs.

For fiscal 2018 the House September 14 approved a fiscal year 2018 wildfire appropriations bill (HR 3354) that would roughly maintain the status quo. For the Forest Service the House recommended \$2.898 billion, compared to a fiscal 2017 appropriation of \$2.833 billion. For an emergency account called FLAME the committee recommended no money, compared to \$342 million in fiscal 2017.

For the Interior Department the House recommendation is \$956 million, compared to a fiscal 2017 appropriation of \$943 million. For an emergency account called FLAME the committee proposed no money, compared to a fiscal 2017 FLAME appropriation of \$65 million.

Trump tells Utah officials he will shrink Bears Ears

President Trump is strongly suggesting that in early December he will reduce the size of the Bears Ears National Monument from 1.35 million acres to 120,000 acres.

Utah Gov. Gary Herbert (R-Utah) said October 27 that the President told him in a phone call that day he will accede to the state's recommendation for the area, and the state has recommended reduction of the monument to 120,000 acres.

"While we do not yet know the specifics of their final plan, I understand from our conversation that any final decision will honor our recommendations," Herbert said in a statement.

In addition to reducing the size of the BLM-managed monument designated by President Obama on Dec. 28, 2016, Herbert said he had recommended "first, that any new boundaries protect the extraordinary antiquities within these areas. Second, that local Native Americans be given meaningful co-management of the lands in the Bears Ears region. And finally, that Congress be urged to pass appropriate protections for federal lands throughout Southern Utah."

Environmentalists' immediate response to word that Trump would reduce the size of Bears Ears was to threaten a lawsuit. "If President Trump attacks the Bears Ears National Monument it will long be viewed as one of the worst acts of injustice committed by a modern president," said Scott Groene, executive director of the Southern Utah Wilderness Alliance. "And one that inevitably will be rectified by a federal court."

Attorneys for native groups that support a Bears Ears monument also threatened to file lawsuits and told the press litigation is "ready to go."

The Native American Rights Fund, representing Zuni, Hopi and Ute Mountain Utes, is taking the lead. Those tribes petitioned Obama for the protective designation.

The three county commissioners in San Juan County, the home of Bears Ears, have all opposed the designation of the Bears Ears area as a national monument, according to Utah newspapers. The three are chairman Bruce Adams, Rebecca Benally and Phil Lyman.

President Trump also told Sen. Orrin Hatch (R-Utah) that he would authorize coal development in the 1.9 million-acre Grand Staircase Escalante National Monument. In addition Trump might reduce the size of Grand Staircase monument.

On August 24 Secretary of Interior Ryan Zinke submitted a recommendation to President Trump that he take unspecified steps to reduce the size of four national monuments in the West and increase consumptive uses in 10 monuments.

On Zinke's chopping block for reductions are Bears Ears, Grand Staircase-Escalante, Cascade-Siskiyou National Monument in Oregon, and Gold Butte National Monument in Nevada. In his recommendation Zinke did not specify how many acres should be removed from each monument.

The Zinke memo argues that past Presidents have violated the Antiquities Act of 1906 by setting aside excessively large amounts of land for monuments.

"No President should use the authority under the Act to restrict public access, prevent hunting and fishing, burden private land, or eliminate traditional land uses, unless such action is needed to protect the object," Zinke said in a document titled *Final Report Summarizing Findings of the Review of Designations Under the Antiquities Act*.

For the six major national monuments in the West up for major change in land uses Zinke recommended that the Presidential Proclamation for each and the management plan for each be reshaped to authorize "traditional uses."

If President Trump does issue proclamations directing revisions to management plans, those revisions could take years to write. Historically, BLM has required around five years to write monument management plans, which are then subject to appeal or lawsuit.

Legislation: Congress entered the overall battle over national monument powers October 11 when the House Natural Resources Committee approved a bill (HR 3990) to set new conditions on designations. The vote was 23-to-17.

Above all, the bill from panel chairman Rob Bishop (R-Utah) would forbid the designation of any national monument larger than 85,000 acres, except in an emergency and that emergency designation could last for only one year.

In addition HR 3990 would give Congressional authority to any administration to reduce existing national monuments larger than 85,000 acres.

The latter provision would give legal coverage to President Trump to reduce the size of the four national monuments in the West, as recommended by Zinke.

The legal debate: Contrasting reports have been posted in the last year on the legality of a President's authority to unilaterally revoke or revise a national monument designation, or to reduce the size of a monument.

A Congressional Research Service (CRS) report of last fall cast doubt that Trump enjoys such authority. But an American Enterprise Institute report published this spring argues that he does.

A new report from public lands consultant Pamela Baldwin backs the CRS report when it argues that the Federal Land Policy Management Act of 1976 (FLPMA) effectively ended the debate when it said the *secretary of Interior* could not "modify or revoke any withdrawal creating national monuments" under the Antiquities Act of 1906.

While that prohibition applies directly to the *secretary of Interior*, Baldwin says by inference it also applies to a President. She says that, "if there is any ambiguity, the entire statute, and the policies and intent of Congress must be considered; and that all provisions of a statute must be given effect. Applying these tenets to the provisions of FLPMA leads to the conclusion that a president lacks the authority to revoke or modify national monuments under the Antiquities Act."

A copy of Zinke's recommendation memorandum is here:

<https://www.documentcloud.org/documents/4052225-Interior-Secretary-Ryan-Zinke-s-Report-to-the.html>.

BLM summarizes - and defends - energy rule revisions

In a formal report the Interior Department November 1 listed the steps it is taking - and intends to take - to overturn Obama administration public lands energy policies.

In some instances those steps may be restrained by federal courts, as has already happened. Several courts have blocked attempts to delay and/or reverse specific regulations because agencies didn't take all the steps mandated by the Administrative Procedures Act.

But for now Secretary of Interior Ryan Zinke is responding to President Trump's charge to report on steps the department is taking to make America dominant in world energy production.

"Interior is committed to an America-First energy strategy that fosters domestic energy production in order to keep energy prices low for American families, businesses, and manufacturers," says the report published in the *Federal Register* November 1.

The report is a first cousin to a comprehensive Interior Department strategic plan that was leaked to the press last week in draft form. That draft plan sets out as a major department goal the acceleration of processing applications for permit to drill oil and gas, but it doesn't get into the weeds of most specific regulation reversals. (See related article page 13.)

Readers of *PLN* are familiar with the various steps Zinke and the Trump administration have taken and plan to take to block and/or revise public lands energy policies. Among the targets are policies governing hydraulic fracturing, methane emissions, coal leasing, fossil fuel energy royalties, onshore oil and gas orders from BLM, the National Petroleum Reserve Alaska, the greater sage-grouse, and BLM resource management planning.

First on the list in the report is a **hydraulic fracturing** rule of March 26, 2015. On July 25 BLM proposed to rescind it. BLM said it did not intend to write a new regulation because other federal regulations and state standards adequately govern the practice.

BLM implied that it had authority to simply cancel the rule because a U.S. District Court in Wyoming set aside the 2015 rule on June 21, 2016. So if the rule never went into effect, BLM suggested, the bureau could simply cancel the rule.

That might avoid the strictures of the Administrative Procedures Act that federal courts say agencies must follow in blocking or reversing regulations. Using such procedures, agencies may need years to change existing regulations.

The Obama hydraulic fracturing rule directed companies to (1) validate well integrity and cement barriers, (2) disclose chemicals used in fracking shortly after completing operations, (3) follow stiffer standards on storage of waste fluids and (4) submit more detailed information on the geology and location of existing wells.

As noted, a federal court had already placed the Obama hydraulic fracturing rule in abeyance. On June 21, 2016, U.S. District Court Judge Scott W. Skavdahl in Wyoming blocked implementation of the regulation, saying BLM had no authority to issue the rule, period. He said Congress had forbidden both BLM and EPA from regulating non-diesel hydraulic fracturing.

Second on the report's list for BLM is a **methane emissions** rule that the bureau October 5 *proposed* to suspend until January 17, 2019. The suspension would give BLM time to write a Trump administration rule to either revoke the Obama rule or revise it.

A federal court on October 4 blocked an initial Trump administration attempt to delay implementation of portions of the rule. In U.S. District Court for Northern California Judge Elizabeth Laporte held that the bureau failed to follow normal rule-making procedures, as required by the Administrative Procedures Act.

The Obama rule requires producers to use available technology to cut flaring in half and to inspect their operations regularly for leaks.

The BLM rule is a companion to an EPA methane emissions rule that the Trump administration is also trying to avoid implementing. However, on July 30 the U.S. Circuit Court of Appeals for the District of Columbia said in a 9-to-2 vote that EPA under the Administrative Procedures Act (APA) must follow formal rule-making procedures before delaying implementation the rule.

EPA first delayed implementation of a methane emissions rule for 90 days beyond a compliance deadline. Subsequently, on June 13 EPA proposed a two-year delay of the methane rule of June 3, 2016.

EPA had argued that it had broad discretion to revisit its own rules under the Clean Air Act. But the D.C. Circuit Court of Appeals ruled that the APA required a reproposal and comment period before suspending/terminating the rule.

The Interior Department review also addressed these other policy areas:

ENERGY ROYALTIES: In a July 1, 2016, rule the Obama administration replaced an old oil, gas and coal royalty standard that applied a series of benchmarks to set the royalty price. In the Obama rule ONRR would begin with a first affiliated sales price, followed by index prices.

The Office of Natural Resources Revenue (ONRR) on August 7 repealed the Obama rule, effective September 6, reinstating the old rule.

Before it repealed the Obama rule on August 7 ONRR had attempted to postpone the Obama rule, only to be blocked by judge Laporte, who again invoked the Administrative Procedures Act requirement to take public comment. Subsequently, ONRR did take public comment, enabling it to repeal the rule on September 6 within the court's guidelines.

COAL LEASING PROGRAM: On March 29, 2017, Secretary Zinke lifted a federal coal-leasing moratorium imposed by his predecessor Sally Jewell on January 15, 2015.

The Zinke report says that BLM is now "working to process coal lease applications and modifications 'expeditiously' in accordance with regulations and guidance that existed before Secretarial Order 3338."

ONSHORE OIL AND GAS LEASING ORDERS: On Nov. 17, 2016, the Obama administration completed new regulations governing site security, oil measurements, and gas measurements.

Says the Zinke review, "The BLM expects to complete its assessment of possible changes to alleviate burdens that may have added to constraints on energy production, economic growth and job creation by the end of the fourth quarter of FY 2017."

NATIONAL PETROLEUM RESERVE ALASKA (NPRA): Although the Obama administration held partial oil and gas lease sales in the reserve on a semi-regular basis, Zinke has made it clear he will make more frequent and more comprehensive sales.

To that end the Interior Department announced October 25 that it will offer for oil and gas lease sale December 6 10.3 million acres of the reserve. That's virtually all land in NPRA cleared for possible sale under a land management plan.

SAGE-GROUSE: In lieu of listing the greater sage-grouse (GRSG) as an imperiled species under the Endangered Species Act the Obama administration in September 2015 had BLM and the Forest Service publish 98 land management plans governing protection of the bird.

Said the review document, "These GRSG plans and policies will affect where, when, and how energy and minerals are developed within the range of the GRSG."

The Interior Department October 11 formally announced that it intends to revise the 98 Obama plans, presumably to loosen up land uses on affected lands. In a *Federal Register* notice BLM said it intends to amend "all or some" of the plans. The bureau will begin by taking public recommendations on possible revisions for 45 days. Completing revised plans would take years. (See related article page *WHAT*.)

BLM PLANNING: Congress gave the Trump administration a boost March 7 by revoking under the Congressional Review Act an Obama administration BLM planning rule of Dec. 12, 2016, the so-called 2.0 rule.

The 2.0 planning rule revised the substance of a previous planning rule by among other things placing a greater emphasis on broad area planning, requiring an assessment prior to the writing of a management plan and involving the public earlier in the planning process.

The Interior review is here:
[https://www.doi.gov/sites/doi.gov/files/uploads/interior energy actions report final.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/interior%20energy%20actions%20report%20final.pdf).

Murkowski moving fast on ANWR, after budget gives go-ahead

Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) is losing no time in producing legislation to open the coastal plain of the Arctic National Wildlife Refuge (ANWR) to oil and gas leasing.

No sooner had the House October 26 given final Congressional approval to a fiscal year 2018 Congressional budget (H Con Res 71) that directs her committee to effectively come up with a leasing plan than she had scheduled a hearing.

Thus, on November 2 the committee considered her legislation (HR 49) that would authorize leasing in the 1.5 million-acre coastal plain to meet the demands of the budget directive. A committee mark-up is tentatively scheduled for November 8.

Said Murkowski, "What Alaskan are asking for is to develop 2,000 federal acres within 1/10,000 of ANWR. We also understand that if we open the 1002 area the economic benefits will be substantial, our national security will be strengthened and the environmental impacts will be minimal."

She addressed the question, would bids for leases be sufficient to produce \$1 billion, as the budget demands. "The answer to that is a simple yes," Murkowski said. "I would remind the committee the first 10 years are just the start. This is the smallest part of a 40-year period where responsible production raises billions of dollars for our country every year."

"The Congressional Research Service has estimated that, depending on oil prices and the amount of resources, development could raise anywhere from \$48.3 billion to \$296.8 billion over 30 years."

As for environmental impacts, she said, "We can be just as confident that the new technology that is still coming on line will insure responsible development does not harm the environment."

But there will be significant pushback, said ranking committee Democrat Maria Cantwell (D-Wash.) She first turned her fire on Secretary of Interior Ryan Zinke, asking him in a November 1 letter if he thought oil and gas development in ANWR was compatible with the purposes of the refuge. The National Wildlife Refuge System Administration Act requires uses to be compatible with the purposes of a site.

"The Arctic National Wildlife Refuge was specifically created to protect the pristine habitats of iconic species like the polar bear, musk ox, and caribou," Cantwell wrote. "Do you believe that oil and gas development is compatible with the purpose for which the refuge was established, which was to protect wildlife and its habitat?"

Cantwell also took exception at the hearing to Murkowski's assertion that only 2,000 acres of the refuge would be impacted by oil and gas development. "There is no new science that says development will take up a smaller footprint," she said. "This map shows development will take up a significant portion of the refuge 1,800 miles of the Trans Alaska Pipeline, 219 miles of power transmission lines - and so on and so forth."

At the hearing Murkowski brought out the big Alaska guns to testify including Gov. Bill Walker (I-Alaska), Sen. Dan Sullivan (R-Alaska) and Rep. Don Young (R-Alaska).

For the Trump administration Greg Sheehan, deputy director of the Fish and Wildlife Service (FWS,) endorsed Murkowski's bill. "If production is authorized by Congress, the Administration believes this will bolster our nation's energy independence and national security, provide economic opportunity for Alaskans and provide much-needed revenue to both the State of Alaska and Federal government," he said.

"With passage of the budget reconciliation provisions in H Con Res. 71, and its revenue-raising instructions to your committee, the department stands ready to assist Congress as it considers legislation, consistent with ANILCA, to authorize the potential development of the resources contained in this area."

The ultimate test for Murkowski will come on the Senate floor when her committee's ANWR leasing plan will be joined with an overall Republican tax reform plan. She will need 50 votes to gain approval of ANWR leasing from the 52-member Senate majority. And Sens. Susan Collins (R-Me.) and John McCain (R-Ariz.) have in the past opposed ANWR leasing, meaning the loss of one more Republican vote would do in the proposal

The stage was set for the Senate Energy Committee October 26 when the House gave final Congressional approval to the fiscal 2018 Congressional budget (H Con Res 71). The resolution takes the first step toward authorizing oil and gas leasing in the coastal plain. The Congressional budget is not submitted to the President for signature.

The budget gives the Senate Energy Committee until November 13 to pass follow-up legislation that comes up with \$1 billion to help balance the budget. That \$1 billion almost assuredly would come from ANWR leasing.

The large Republican majority in the House almost guarantees endorsement of ANWR leasing there.

In the House Young, who for four decades in Congress has fought to open the coastal plain of ANWR, was ecstatic about the budget approval. "This budget resolution not only lays the foundation for achieving much needed tax reform, it takes us one step closer to unleashing Alaska's true energy potential through the development of ANWR two issues that will not be easy, but are vitally important for Alaska," he said. "ANWR is absolutely key in this equation, especially as we look to generate new revenue, create new jobs and opportunities for our people, and strengthen our economic outlook."

The follow-up legislation in main is designed to open the way for President Trump's tax reform, with ANWR going along for the ride.

In a closely related development the Interior Department announced October 25 that it will offer for oil and gas lease sale December 6 10.3 million acres of the National Petroleum Reserve Alaska (NPRA), virtually all land in NPRA cleared for possible sale under a land management plan.

Since 1999 BLM has offered in annual sales between 1.4 million and 5.8 million acres in NPRA. Currently, less than 1.4 million acres of NPRA are under lease.

However, NPRA, which is adjacent to the coastal plain of ANWR, has shown increasing promise for oil and gas development. The lead lessee in the area, ConocoPhillips Alaska, has identified significant oil deposits.

Murkowski welcomed the NPRA sale announcement. "Responsible development in the NPRA will strengthen our economy, begin to refill our Trans-Alaska Pipeline System, and generate new wealth to create prosperity and reduce our deficits," she said. "Those are substantial benefits—and this lease sale is a key step to gaining them."

The Wilderness Society objected, pairing the ANWR and NPRA developments. Said the society's Alaska Regional Director Nicole Whittington-Evans, "Combined with efforts to open the Arctic National Wildlife Refuge for oil and gas drilling, this announcement about the Western Arctic reflects the current administration's wholesale approach to turning over America's public lands to the highest bidders for development. They are asking the oil and gas industry to bid on every possible acre."

As for the budget boost to ANWR, the House initially in early October approved a version of H Con Res 71 that assumed leasing in ANWR would produce \$3.5 billion.

There is some question that oil and gas leasing in the coastal plain will produce the Senate's \$1 billion or the House's \$3.5 billion, presumably in the form of bonus bids, as Murkowski noted. (Royalties are likely to be minimal because production wouldn't begin for years.)

The liberal group the Center for American Progress in a recent report doubted that leasing would produce bonus bids of even \$75 million, let alone \$1 billion. The group said bids in the adjoining National Petroleum Reserve (NPRA) since 1999 averaged \$50 per acre.

The center summed up, "If all 1.5 million acres of the Arctic Refuge's coastal plain were sold for oil drilling over the next 10 years at an average bonus bid of \$50 per acre, the federal government would receive \$75 million in revenue. After providing the State of Alaska a required 50 percent share of federal energy royalties, the U.S. Treasury would receive just \$37.5 million."

Matt Lee-Ashley, a veteran in the public affairs office of the Obama administration's Interior Department, was a lead author of the center's report.

The original House budget's estimate of \$3.5 billion was based on an August 2012 report of the Congressional Budget Office (CBO). That report estimated that in 2012 the coastal plain contained 8 billion barrels of oil, compared to the same 8 billion barrels of oil on all onshore federal lands in the lower 48 states.

"CBO expects that opening ANWR to development would yield about \$5 billion in additional receipts over the next 10 years, primarily in the form of bonus payments made by private firms for the opportunity to explore for and develop resources in particular areas," said the report, with half that money going to the federal government and half to the State of Alaska.

Additional revenues near the end of the 10-year period would presumably come from royalties. However, CBO acknowledged in its report that it assumed a price of oil from "under \$100 per barrel to over \$150 per barrel." The price of oil presently is about \$52 per barrel. The CBO report is available at: <https://www.cbo.gov/publication/43527>.

The Center for American Progress report is available at:
<https://www.americanprogress.org/issues/green/news/2017/10/10/440559/arctic-national-wildlife-refuge-101/>.

Perhaps most important, the Republican budget strategy would allow the Senate to approve the tax/ANWR package by a 50-vote majority in a giant reconciliation bill, not the 60 votes needed when a filibuster is in play.

However, there is no guarantee that Senate leadership has the votes to approve the ANWR provision, let alone the greater budget. The GOP only has a two-vote majority and Sens. Thad Cochran (R-Miss.) has been ailing and several other moderate Republicans are reportedly on the fence, such as McCain and Collins.

The Trump administration is an enthusiastic supporter of ANWR leasing. As PLN has reported the Interior Department intends to write a regulation soon that would lead to oil and gas exploration within the coastal plain of ANWR.

In the Interior Department campaign for ANWR development a memo from Acting Fish and Wildlife Service (FWS) Director James W. Kurth tells the Alaska regional director to prepare a rule that, when completed, "will allow for applicants to [submit] requests for approval of new exploration plans."

FWS in the 1980s first authorized exploration in ANWR over an 18-month period to help estimate oil and gas reserves in the 1.5 million-acre coastal plain. Environmentalists and their supporters, including the Obama administration, have argued that the 1980 Alaska National Interest Lands Conservation Act (ANILCA) only authorized the one exploration program. Only Congress is allowed to authorize oil and gas development under ANILCA.

The Obama administration recommended the coastal plain be designated wilderness, a recommendation that stays in place unless Congress overrules it or the Trump administration removes the wilderness recommendation.

Transfer of grouse management to states gets an airing

Some but not all western states October 25 endorsed greater delegation to them of responsibility for managing the greater sage-grouse at a hearing of the House Natural Resources Committee.

Idaho was particularly supportive of delegation. Said Rep. Scott Bedke (R), speaker of the House in Idaho, "There seems to be a growing trend in federal resource planning of ignoring the needs of the Western States, to say nothing of the decades of wisdom and practical experience we can offer."

He added, "Let me speak more specifically: Catastrophic wildfire is the top concern in Idaho sage grouse habitats. Our plans are designed to address the factors which can result in catastrophic wildfire. Federal sage-grouse plans not only ignore Idaho's science and our decades of experience in addressing these contributing factors, but they will actually make the situation worse."

But a witness representing Montana said that his state supported the existing Obama administration regime governing the greater sage-grouse in the

West, i.e. 98 land use plans written by BLM and the Forest Service in cooperation with the states.

John Tubbs, director of the Montana Department of Natural Resources, said the Trump administration would be well advised to follow the Obama finding that listing the sage-grouse was not necessary at this time. He also questioned the need for Secretary of Interior Ryan Zinke to rewrite the 98 plans.

"It is imperative that we avoid prolonged and unnecessary work that would unravel the foundation of the 2015 'not warranted' finding to the point that we all risk a result we worked so hard to avoid," he said. "Adaptive implementation of the plans can reduce uncertainty for our partners, industry, and working ranch families who take care of the land and the wildlife on our behalf and can help address inconsistencies efficiently."

Secretary Zinke, commodity users of the public lands and many western Republicans are eager to tear up the Obama administration sage-grouse plans in order to transfer to states greater management responsibility.

Said committee chairman Rob Bishop (R-Utah), "[T]he federal government under the Obama administration insisted on managing Greater Sage Grouse recovery with a Washington, D.C., one-size-fits-all approach that fails miserably to address the individual management challenges present in each state. The purpose of today's hearing is to provide further evidence that state and local control leads to lasting success. States have consistently proven to be masters at caring for their own lands and wildlife, and sage grouse is no different."

Ranking committee Democrat Raúl M. Grijalva (D-Ariz.) charged that committee Republicans know that legislation to formally transfer authority to manage the sage-grouse to states is a non-starter. Grijalva's office said in a statement that Bishop "has no confidence that a bill attacking proper management of sage-grouse could withstand scrutiny from sportsmen's groups, Republican governors and the American people."

The Interior Department October 11 formally announced that it intends to revise the 98 Obama plans, presumably to loosen up land uses on affected lands. In a *Federal Register* notice BLM said it intends to amend "some, all or none" of the plans. The bureau will begin by taking public recommendations on possible revisions for 45 days. Completing revised plans would take years.

BLM said it was soliciting advice in part because of a recent district court decision that requires the agencies to prepare a supplemental EIS on the designation of sage-grouse focal areas where mining is forbidden. However, the court did not halt implementation of the plans.

In addition to launching the revision of the sage-grouse plans BLM cancelled a proposed withdrawal of 10 million acres from hard rock mining to protect the sage-grouse.

"The proposal to withdraw 10 million acres to prevent 10,000 from potential mineral development was a complete overreach," said Acting BLM Director Mike Nedd.

The Obama administration segregated the 10 million acres from the mining law on Sept. 24, 2015, for two years. The two years has ended. On Dec. 30, 2016, BLM published a draft EIS on a 20-year withdrawal with public comments accepted until March 28 of this year. That, of course, opened the way for the Trump administration to cancel the proposed withdrawal.

Secretary Zinke has offered broad clues as to what he thinks BLM should do in revising the plans. In an August 7 memo he directed BLM to make fundamental changes that would at once loosen restrictions on commodity users and defer more to state policies.

High on Zinke's list of changes is direction to "Modify or issue new policy on fluid mineral leasing and development" and "Work with the States to improve techniques and methods to allow the States to set appropriate population objectives."

The western governors have not been unified in their demand for wholesale changes in the 98 plans. On May 26 Wyoming Gov. Matt Mead (R-Wyo.) and Colorado Gov. John Hickenlooper (D-Colo.) wrote Zinke and asked him NOT to change course. In addition Montana has generally supported the plans.

The Obama administration sage-grouse policy, issued on Sept. 22, 2015, did not list the greater sage-grouse as an endangered or threatened species as western states had feared. Instead, it directed BLM and the Forest Service to implement 98 records of decisions to protect the bird. The plans apply to 67 million acres across 10 western states.

If as promised the Trump administration's Interior Department revises the 98 sage-grouse plans, that action may affect a slew of lawsuits against the Obama plans.

As a first order of business the new plans may render moot lawsuits brought by the states of Idaho and Utah and by the oil and gas industry. Those lawsuits said the Obama plans were too limiting; the Trump plans would be less limiting.

But the changes to the plans may well revive an environmentalist lawsuit that charges the Obama plans weren't limiting enough. Even less limiting plans from the Trump administration would not only lead to an amended lawsuit but it might also bring on new litigation.

Draft DoI strategic plan projects end to APD backlog

A draft Interior Department strategic plan leaked to the media last week contains few specific goals, other than to accelerate oil and gas paperwork by hard dates.

In following the Trump administration's overall policy of hiking public lands energy development the draft plan would have BLM eliminate completely a backlog of applications for permits to drill (APDs) by Sept. 30, 2019, says the plan obtained by the *Nation* magazine.

At the end of fiscal 2017 BLM said there was a backlog of 2,552 unprocessed APDs.

In addition the plan would have BLM by Sept. 30, 2019, "process 80% of

Expressions of Interest to lease public lands for oil gas or mineral extraction within 180 days."

For most other commercial uses of the public lands, such as hard rock minerals, grazing and timber the draft plan is noncommittal about specific goals and, indeed, mostly talks about balance.

For instance, about grazing the draft makes room for a target percentage of grazing permits processed but qualifies, "as consistent with applicable resource management plans."

The draft anticipates Secretary of Interior Ryan Zinke will announce the completion of a final document in December to cover all department activities during the five *fiscal* years between 2018 and 2022.

In a related development Zinke on October 25 published a report on energy regulations he intends to reverse/modify (see related article page 6.)

Although the separate, draft strategic plan recommends for the most part balance between use and protection, it drew immediate fire from the Sierra Club for being pro-development.

"The news out of Interior today highlights exactly where Secretary Zinke's priorities lie: not with protecting our public lands for future generations or ensuring that energy development is compatible with the health and safety of our communities, but with enriching his friends and giving handouts to corporate polluters at all costs," said Lena Moffitt, senior director of the Sierra Club's Our Wild America Campaign.

The energy industry and its western Republican allies continue to complain that BLM and its federal agency partners take too long to process APDs. To that end House Natural Resources Committee Republicans have put together a draft bill to turn over APD work to states, if states so desired.

House Subcommittee on Energy Chairman Paul Gosar (R-Ariz.) lauded the draft bill at an October 13 hearing. He said it would lead to an increase in energy development on onshore public lands, and an increase in royalties for both federal and state governments.

But committee Democrats countered that industry is not developing permitted leases now. Led by ranking House Natural Resources Committee Member Raúl M. Grijalva (D-Ariz.) they said last week, "Companies typically file for considerably more permits than they need, and by the end of fiscal year 2016 the industry held a total of 7,950 approved permits still waiting to be used. Contrary to frequent industry and Republican complaints, the number of pending APDs at the end of fiscal year 2017 stood at only 2,552, the lowest in at least a dozen years."

In one other area of specifics dealing with endangered species the draft DoI strategic plan anticipates that by September 30, 2018, all Species Status Assessments developed by the Fish and Wildlife Service will have at least two state representatives. Those assessments are used by the service in listing or delisting decisions under the Endangered Species Act.

As for overall planning goals the draft plan calls for balance. It says, "The DOI is undertaking the challenge to review and improve its planning process in ways that can best meet the sometimes-conflicting uses

for public lands. The DOI will strive to enhance public participation and input to the planning processes, engage our state and local government partners, provide open and understandable decision-making, expedite the decision-making process so that implementation is not delayed, and ensure that public access and use is appropriately built into every land use plan."

The document is available at:
<http://www.documentcloud.org/documents/4117074-Leaked-Draft-DOI-Strategic-Plan-Watermark.html#document/p1/a384536>.

Three Republican senators block ESA delegation proposal

The Senate October 19 rejected a proposal to remove from federal control management of species wholly within one state under the Endangered Species Act (ESA).

In effect the amendment from Sen. Mike Lee (R-Utah) would have opened the way for states to regulate endangered species that don't cross state borders.

The vote was a close 49-to-51 with three Republicans in opposition. The three Republicans who voted against - Sens. Lamar Alexander (R-Tenn.), Susan Collins (R-Me.) and Bob Corker (R-Tenn.) may set a precedent for more ambitious ESA reform legislation, as well as other natural resources legislation.

In the pipeline the House Natural Resources Committee October 3 approved five ESA bills that would revise substantially the law, although individually the bills would have limited impacts. Most of those bills enjoyed some Democratic support, so they might gain Senate report. But more sweeping reform as championed by western Republicans would have a harder time of it in the Senate.

Lee argued on the Senate floor that the U.S. Constitution limits the federal government's powers primarily to interstate transactions; it leaves to the states oversight of intrastate activities.

"(The constitution) does not give the Congress the power to regulate any and every activity occurring intrastate," he said. "Yet, for the last few decades, under the Endangered Species Act, this very power has been abused to regulate species that exists only in one place, only within one State, never crossing State lines, never forming any part of any channel or instrumentality of interstate commerce."

But Sen. Tom Carper (D-Del.), ranking minority member on the Senate Environment and Public Works Committee, disagreed, arguing that the majority of species are intrastate and many are deserving of federal protection.

"Seventy-seven percent of all listed species, including the polar bear, the Florida panther, and many more are found only in one State, and for an island State like Hawaii, all of its species would lose protection," he said.

The House Natural Resources Committee October 3 approved these ESA bills: HR 1274, which would make listing data available to states prior to a listing (approved 22-to-14); HR 424, which would forbid litigation against the

delisting of the Wyoming population of the gray wolf (approved 26-to-14); HR 717, which would include economic factors in listing decisions (approved 22-to-13); HR 2603, which would bar nonnative species from being considered as imperiled under the ESA (approved 22-to-16); and HR 3131, which would limit awards to environmental plaintiffs in ESA litigation (approved 22-to-16).

In the Senate Sen. John Barrasso (R-Wyo.), chairman of the Senate Environment and Public Works (EPW) Committee, is taking the lead in revising the ESA.

Barrasso led off the Republican campaign with an initial Senate EPW committee oversight hearing February 15. Barrasso laid out this bottom line at the hearing: "Here's the problem. The Endangered Species Act is not working today and we should be concerned when the (ESA) fails to work. States, wildlife managers, home builders, construction companies, farmers, ranchers and other stakeholders are all making it clear that the (ESA) is not working today."

A central complaint of critics of the law is the legal deadline for FWS to act on petitions to list species for protection. FWS must first determine within 90 days if a petition merits study and, if so, make a listing determination within a year.

That the Republican Congress, in concert with the Trump administration, intends to make significant changes in the law is a given. But the path in the legislative process won't be smooth because the ESA traditionally has enjoyed some Republican support and strong public support, viz. the Lee amendment.

The Republican are particularly perturbed by two overarching agreements the Obama administration struck in 2011 with environmental groups to settle lawsuits. The environmentalists said FWS and the National Marine Fisheries Service were too slow in acting on 1,000 listing petitions.

In the first agreement on May 17, 2011, FWS struck a deal with WildEarth Guardians to process petitions for 251 candidate species. In return WildEarth, which had been plastering FWS with listing petitions, agreed to limit the number of future petitions. Among the 251 species is the Greater sage-grouse. On July 12, 2011, FWS reached a second agreement with the Center for Biological Diversity to protect 757 species by 2018.

Spending bill with DoI money still hung up in Senate

Until the health of Senate Appropriations Committee Chairman Thad Cochran (R-Miss.) improves, fiscal year 2018 spending bills may continue to stall in his panel.

That increases the possibility that the Senate won't complete eight remaining domestic bills including a public lands measure this fall, leaving crucial negotiations up to House and Senate appropriators in December. The House approved its version of a bill (HR 3354) on September 14.

The continued incapacitation of Cochran, 79, forced the cancellation of a scheduled committee mark-up a fortnight ago of the fiscal 2018 Interior and

Related Agencies appropriations bill. The subcommittee on Interior had been scheduled to mark up October 17 and the full appropriations panel October 19.

When Cochran did not show up for those mark-ups, he was reportedly suffering from a urological problem. He did make it to the Senate floor October 19 for approval of a Congressional budget.

When Cochran appeared for the budget vote he was said to be frail and disoriented. He needed a staff member to guide him into the Senate chamber and appeared confused about how he was supposed to vote.

On December 8 a temporary spending measure (PL 115-56 of September 8) is due to expire. Senators would like to at least have a draft bill introduced to use as a negotiating tool with the House and the Trump administration on fiscal 2018 spending.

Senate subcommittee leaders in past years have introduced such drafts, as the subcommittee on Interior and Related Agencies did in 2013 for a fiscal 2014 appropriations bill. That measure was eventually completed in January 2014 in a giant, all-department spending measure.

If and when the Senate committee addresses a fiscal 2018 spending bill, it will have major obstacles to overcome. First and foremost, the committee will use a significantly higher spending cap than in the House-passed bill. The Senate committee would have \$600 million more to work with.

However, the Senate cap for the Interior and Related Agencies bill is still \$224 million less than a final fiscal 2017 appropriation of \$32.224 billion.

On the all-important wildfire front the Senate panel must come up with some \$4 billion for wildfire suppression and fire prevention programs. In addition the panel will surely be asked to transfer extraordinary emergency wildfire spending costs out of line appropriations and into disaster spending, although that may be a responsibility of the Senate Budget Committee.

The Senate Republican money committee members will almost certainly demand several public lands riders. In the past the committee has supported riders that would ban the listing of the sage-grouse as threatened or endangered under the Endangered Species Act and forbid the Interior Department from delisting the gray wolf in Wyoming from the Endangered Species Act. Those actions are extreme long-shots in the Trump administration, but still.

The committee will also be asked to set aside money for the payments-in-lieu of taxes (PILT) program. It received \$465 million in fiscal 2017 and the House has approved the same number for fiscal 2018. Congress has occasionally paid for PILT outside of appropriations bills. The Trump administration had recommended \$397 million for PILT.

Sen. Lisa Murkowski (R-Alaska) chairs the Senate subcommittee on Interior and Related Agencies appropriations and Sen. Tom Udall (D-N.M.) is the ranking minority member.

If the appropriations committee does approve the Interior and Related Agencies spending bill soon, it is unclear what would happen after that

procedurally. Complicating things, the House in passing its version of HR 3354 September 14 packaged the Interior and Related Agencies bill with seven other domestic bills.

In addition the House and Senate are expected to package the eight domestic bills and four natural security bills into one measure in December, when the hard spending decisions are to be made.

The Senate Appropriations Committee spending cap for the fiscal 2018 Interior bill is \$32 billion, compared to \$31.4 billion in the House and to a Trump administration recommendation of \$27.1 billion.

The House-approved version of HR 3354 includes the following **numbers**, compared to fiscal 2017 allocations:

For BLM resource management and the National Forest System the House approved modest decreases. For BLM resource management the House approved a decrease of \$20 million, from \$1.095 billion in fiscal 2017 to \$1.075 billion in fiscal 2018. For the National Forest System the committee also approved a decrease of \$20 million, from \$1.513 billion in fiscal 2017 to \$1.493 billion in fiscal 2018.

The House allocations for some public lands programs were a little higher than those numbers would at first suggest, because the panel reduced allocations to federal land acquisition under the Land and Water Conservation Fund (LWCF). Thus the National Forest System allocation actually increased by a small amount outside of LWCF acquisitions.

As has become customary, wildfire suppression is eating up a significant portion of the subcommittee's \$31.4 billion allocation, \$3.4 billion, or about 11 percent of the total. And the House did not act on recommendations that it attempt to shift emergency wildfire costs out of the bill and into disaster funding.

RIDERS: The House-passed bill includes provisions to ban implementation of a wetlands regulation; ban listing of the greater sage-grouse as threatened or endangered under the Endangered Species Act; and ban the delisting of the gray wolf in Wyoming.

The legislation would also forbid the listing of any wolf species in the lower 48 states as threatened or endangered under the Endangered Species Act.

On the floor the House approved amendments that would forbid the spending of any money by BLM to implement a methane emissions rule, oil and gas measurement orders, and an oil and gas site security order. And the House adopted an amendment to forbid EPA from spending money on a methane emissions rule of its own.

The House did reject one amendment related to the public lands that would have authorized EPA and the Corps of Engineers to implement an Obama administration Waters of the United States rule. The House sided with a Bush administration rule.

IBLA decisions

(We post current Interior Board of Land Appeals decisions at our website, <http://www.plinfor.com/ibla.htm>. IBLA may be contacted at: Interior Board of Land Appeals, 801 North Quincy St., MS 300 QC, Arlington, VA 22203. Phone (703) 235 3750.)

Subject: Oil and gas bond.

BLM decision: BLM will demand an increase in a reclamation bond when there is a change in status of an operator's wells, i.e. well abandonment.

Appellant lessee: BLM's demand is excessive; current bond is sufficient.

IBLA decision: Affirmed BLM.

Case identification: *Mar/Reg Oil Company, 192 IBLA 001.* Decided October 31, 2017. Seven pages. Appeal from a decision of the Utah State Office of BLM determining that an oil and gas operator must furnish an increased statewide oil and gas bond. UTB000019.

IBLA argument: IBLA Administrative Judge James K. Jackson affirmed a BLM decision increasing an oil and gas operator's statewide reclamation bond from \$25,000 to \$85,000. BLM increased the bond because the operator temporarily abandoned a well, leaving 14 of its 19 wells in the Canyon Country of Utah non-producing. BLM based the increase on an analysis performed by a petroleum engineer. The appellant operator argued that it could plug and abandon the one well for much less than the existing bond, let alone for the higher bond. But judge Jackson said the lessee offered no proof that the existing bond should remain, other than a statement that plugging and reclamation could be done for \$10,000. So, concluded Jackson, "When challenging a bond increase based on a BLM estimate of plugging, abandonment, and reclamation costs, the appellant must submit an itemized estimate of such costs that was prepared by a qualified expert. Since (the operator) has not submitted such an estimate or made a similar showing in this case, it has failed to carry its burden to show BLM erred in estimating applicable costs and requiring an increase of its statewide bond."

Notes

USDA energy plan hits withdrawal. Responding to President Trump's order to promote energy production in the country, the Department of Agriculture has prepared a report recommending fifteen policy changes affecting the Forest Service. Prominent among them is the cancellation of a January 21, 2012, withdrawal of a million acres from uranium mining claims on public lands near Grand Canyon National Park. The withdrawal applied to 350,000 acres of national forest and 650,000 acres of BLM land. Says the department report, "Adoption of this recommendation could re-open lands to mineral entry pursuant to the United States mining laws facilitating exploration for, and possibly development of, uranium resources." Says The Wilderness Society, "The Forest Service's recommendations will turn iconic places like the Grand Canyon into industrial zones and put drinking water at risk for 66 million people across the country." Said Ranking House Natural Resources Committee Member Raúl M. Grijalva (D-Ariz.), "President Trump wants to turn one of the world's greatest natural wonders into a strip mine." BLM put together the withdrawal and would have to undo it on behalf of the Forest Service. In other recommendations in the Department of Agriculture report are a number of steps to accelerate the processing of energy permits and limit environmental reviews. Again, BLM would have responsibility for making most of the changes. Trump issued his executive order requesting agency input on accelerating energy development on March 28 in Executive Order 13783. The Department of Agriculture report is available at: https://www.eenews.net/assets/2017/11/01/document_pm_05.pdf.

State-run energy bill may move. House Natural Resources Committee Chairman Rob Bishop (R-Utah) November 1 said he would couple an onshore energy bill with offshore oil and gas expansion proposals. The *Washington Examiner* reported that Bishop intends to move the whole package to the House floor "in the coming weeks." The draft onshore bill, considered in a hearing by Bishop's committee October 13, would turn over to states authority to

approve oil and gas drilling permitting on onshore public lands. To obtain such powers under the bill a state would first have to gain approval from the federal government of a management program. In addition, if a state had a hydraulic fracturing regulation in place and most do the federal government would not be able to regulate the practice. Bishop told the *Examiner*, "This comprehensive overhaul of upstream energy policy creates the regulatory certainty that is needed to spur economic investment on federal lands."

Enviros say O&G, sage-grouse don't mix. Three environmental groups October 31 filed an appeal to the Interior Board of Land Appeals (IBLA) against the offering by the BLM Utah State Office of nine tracts for oil and gas lease sale near sage-grouse habitat. Although BLM offered nine tracts for lease in the September 12 sale, it received bids on only three, covering 4,102 acres. The small number of acres is not as important, said the groups led by the Western Watersheds Project, as the location of the parcels near the habitat for the Sheeprocks population of the greater sage-grouse. "Even the most carefully controlled industrial intrusions at the edges of key habitats can cause grouse to abandon undeveloped habitats up to 3 miles away," said Erik Molvar of Western Watersheds Project. "Given the precariously low sage grouse population in the Sheeprocks area, the BLM has no business leasing these lands to become a future oil and gas field." The September Utah sale pales in comparison in size with a scheduled December sale of 94,000 acres. Environmentalists are already objecting to the December sale because of inclusion of tracts near Dinosaur National Monument and in the San Rafael Swell in areas they have recommended for wilderness. The appeal of the September sale is available at: http://biologicaldiversity.org/programs/public_lands/energy/dirty_energy_development/oil_and_gas/pdfs/Sheeprocks_Appeal_and_Petition_for_Stay.pdf.

PILT promise in Hill budget. The final Congressional budget (H Con Res 71) approved by the House October 26 directs authorizing committees to approve full, permanent funding for the payments-in-lieu of taxes (PILT) program. Sen. Tom Udall (D-N.M.) persuaded the Senate to approve the PILT provision just before the Senate passed H Con Res 71 October 19. The Congressional budget does not go to the President. An Udall press release says his PILT amendment "directs Congress to fully fund" PILT. However, the language of the provision also says that Congress should do so only if legislation didn't increase the federal deficit. The Senate approved Udall's amendment by 58-to-41 with some western Republicans opposing. Indeed, Senate Budget Committee Chairman Mike Enzi (R-Wyo.) said the Udall amendment was unnecessary because H Con Res 71 already contained a provision that would allow for increased spending for PILT, if such spending wouldn't increase the budget, although it didn't direct line committees to make PILT permanent. The provision already in the bill would also allow for more funding for the Secure Rural Schools (SRS) program. PILT is in better shape than SRS with a \$465 million appropriation in fiscal 2017, which is the same appropriation the House approved for fiscal 2018 on September 14. But Congress in a fiscal 2017 spending bill (PL 115-31 of May 5) approved no money for SRS. And the House September 14 approved the fiscal 2018 spending bill (HR 3354) with no money for the program. SRS was last authorized in fiscal year 2015, with \$300 million in payments allocated in March of 2016.

O&G leasing near Yellowstone? The WildEarth Guardians environmental group is charging that the Montana State Office of BLM intends to offer for lease in March tracts "on the doorstep" of Yellowstone National Park. Those lands, said the group, are adjacent to Livingston, Mont., a gateway city to

Yellowstone. However, Livingston is 60 miles from the park. The group said October 25 that other sensitive areas in the state are at risk in the sale as well, including the Beartooth Front. In announcing the sale of 110 nominated tracts in March the Montana BLM State office said the sale was covered by an environmental assessment and the sale is in accordance with all applicable approved resources management plans and plan amendments. The proposed Montana sale is one of many proposed sales around the West that environmentalists are objecting to. As we have reported in recent issues of *PLN* environmentalists are preparing to object to big oil and gas lease sales in December in Wyoming, Utah, Colorado, Montana, Nevada and New Mexico. In exhibit one WildEarth Guardians earlier in October protested a scheduled December sale of 94,000 acres in Utah. Guardians says some of those parcels are too close to Dinosaur National Monument or are inside the San Rafael Swell.

Palen solar project revived. BLM has completed a draft EIS and plan that would make way for the oft-postponed Palen Solar project in Riverside County, Calif. The project has gone through several ownerships since first proposed in 2007 and BLM has prepared several analyses of the project. Now it appears that the most recent owner, EDF Renewable Energy, is ready to go ahead with the project that would occupy 4,200 acres of BLM land. Construction of the 500 MW solar photovoltaic facility is expected to begin next year with commercial operations phased in between 2018 and 2021. More information is available at: <https://www.blm.gov/press-release/blm-seeks-public-input-draft-plan-palen-solar-photovoltaic-project>.

Boxscore of Legislation

Fiscal year 2018 appropriations

HR 3354 (Calvert). House approved September 14. Would reduce spending for most public lands programs, but not as much as the Trump administration has requested.

Fiscal year 2017 appropriations (full year)

HR 244 (Cook). President Trump signed into law May 5 as PL 115-31. Appropriates roughly same amounts of money as fiscal 2016. Was stripped of riders.

Rule restrictions

HR 21 (Issa). House approved January 4. Would allow Congress to revoke groups of regulations at one time with majority vote (no Senate filibuster.)

HR 5 (Goodlatte). House approved January 11. Would subject BLM and FS plans to major economic impact analysis.

(*Specific rules*) HJ Res 36 (Bishop), HJ Res 44 (Cheney), HJ Res 35 (Young. President Trump signed into law March 27 (PL 115-12) a resolution reversing a BLM planning rule (HJ Res 44). Trump signed into law April 3 a resolution (PL 115-20) reversing a FWS hunting rule in Alaska (HJ Res 35). The Senate defeated 51-to-49 a resolution that would have reversed a BLM methane emissions rule (HJ Res 36).

Federal land transfers

H Res 5 (McCarthy). House approved January 3. Would not require economic offsets if Congress tried to transfer federal lands to states, local governments or tribes.

HR 232 (Young). Young introduced January 3. Would allow states to acquire up to 2 million acres of national forest.

National monument restrictions

S 33 (Murkowski), S 132 (Crapo), HR 3990 (Bishop). House committee approved HR 3990 October 11. Murkowski introduced January 5. Crapo introduced January 12. Bishop would limit President's monument designation authority in several ways. Murkowski would require Congressional and state approval of new monuments. Crapo would require Congressional approval.

New national monuments

HR 360 (Grijalva). Grijalva introduced January 6. Would establish a Greater Grand Canyon Heritage National Monument.

Wildfire

HR 2862 (Simpson), HR 2936 (Westerman), S 1571 (Crapo). Simpson introduced June 8. House approved HR 2936 November 1. All bills would revise emergency fire spending; Westerman would also accelerate timber sales.

Greater sage-grouse

HR 527 (Bishop), S 273 (Risch). Bishop introduced January 13. Risch introduced February 1. Would largely revoke federal sage-grouse management policy and give the job to the states.

Wolf in Wyoming

HR 424 (Peterson, Cheney), S 164 (Johnson). Peterson introduced January 10. Johnson introduced January 17. Would maintain the delisting of the gray wolf in Wyoming, overcoming a judge's decision. (In House committee's fiscal 2018 approps bill.)

Critical minerals

HR 520 (Amodei), S 145 (Heller). House hearing March 21. Senate hearing March 28. Would have federal land managers establish time lines for acting on all mineral permits.

Mine law reform

S 1833 (Udall). Udall introduced September 19. Would establish a hard rock royalty and tougher environmental standards.

Energy bill (omnibus)

S 1460 (Murkowski). Murkowski introduced June 28. On Senate agenda. Would revise dozens of energy policies.

Energy policy limitations

S 737 (Markey), S 800 (Cantwell), HR 1819 (Cartwright), S 750 (Merkley), S 987 (Merkley). Markey introduced March 27. Cantwell and Cartwright introduced March 30. Merkley introduced March 28. Merkley introduced April 27. Markey would increase coal royalty, Cantwell and Cartwright would forbid coal self-bond, and Merkley would forbid new fossil fuels leasing from the public lands.

County assistance

S 1027 (Hatch), HR 2340 (Rodgers). Hatch, Rodgers introduced May 3. Would reauthorize Secure Rural Schools program for two years.

Arctic National Wildlife Refuge (development)

S 49 (Murkowski). Murkowski introduced January 5. Would open coastal plain to O&G development.

Arctic National Wildlife Refuge (wilderness)

HR 1889 (Huffman), S 820 (Markey). Huffman and Markey introduced April 4. Would designate coastal plain as wilderness.

BLM foundation

HR 1668 (Hice) HR 244 (Cook). President Trump signed the fiscal 2017 appropriations bill into law May 5 as PL 115-31 that establishes a BLM foundation, like those supporting NPS, FWS and FS.

Land and Water Conservation Fund

HR 502 (Grijalva), S 569 (Cantwell), S 896 (Burr), HR 2836 (Simpson), HR 2943 (Barragán). Grijalva introduced January 12. Cantwell introduced March 8. Burr introduced April 7. Simpson introduced June 8. Barragán introduced June 21. HR 502, S 569, and S 896 would make the program permanent. HR 2836 would authorize for seven years and split money with land management agency maintenance. Barragán would set aside